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Volume I: 1a-298a

NO. 00-1714

In the Supreme Court of the United States

May Term 2001

C. DELORES TUCKER and WILLIAM TUCKER, her husband,

Petitioners

vs.

RICHARD FISCHBEIN; TIME, INC.; BELINDA LUSCOMBE; NEWSWEEK MAGAZINE, and JOHNNIE ROBERTS,

Respondents

APPENDIX

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

991139

C. DELORES TUCKER;
WILLIAM TUCKER, her husband

v.

RICHARD FISCHBEIN; BELINDA LUSCOMBE;
NEWSWEEK MAGAZINE; JOHNNIE L. ROBERTS;
TIME INC.

C. Delores Tucker;
William Tucker,
Appellants

SUR PETITION FOR REHEARING

Present: SLOVITER, MANSMANN, SCIRICA, NYGAARD, ALITO, ROTH, BARRY, AMBRO, and FUENTES, *Circuit Judges*, and ROSENN, *Senior Circuit Judge*•

The petition for rehearing filed by appellants in the above entitled case having been submitted to the judges who participated

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•As to panel rehearing only.

in the decision of this court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is denied.

By the Court,
/s/Sloviter
Circuit Judge

DATED:14 FEB 2001

Appendix

Filed January 9, 2001

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 991139

C. DELORES TUCKER;
WILLIAM TUCKER, her husband

v.

RICHARD FISCHBEIN; BELINDA LUSCOMBE; NEWSWEEK MAGAZINE; JOHNNIE L. ROBERTS; TIME INC.

C. Delores Tucker;
William Tucker,
Appellants

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

(D.C. No. 97-cv-06150)
District Judge: Honorable Ronald L. Buckwalter

Argued October 1, 1999

BEFORE: NYGAARD, ALITO, and ROSENN, *Circuit Judges*.

(Filed: January 9, 2001)

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Appendix

OPINION OF THE COURT

ALITO, Circuit Judge:

This case marks the third round of litigation between C. Delores Tucker, a former state official and a community leader, and the record companies and performers responsible for what is known as "gangsta rap."[1] Since 1993, C. Delores Tucker has crusaded against gangstarap lyrics, which, she asserts, "grossly malign black women, degrade the unthinking young black artists who create [gansta rap], pander pornography to our innocent young children, hold black people universally up to ridicule and contempt, and corrupt its vast audience of listeners, white and black, throughout the world." App. at 2322. Mrs. Tucker has taken her message to shareholder meetings of major corporations to pressure them to divest their holdings in record companies that produce gangsta rap; she has also addressed Congress to urge that steps be taken to "curb and control the proliferation of vile, demeaning pornographic and misogynistic music." *Id.*

Mrs. Tucker's efforts caught the attention of the rap industry, and in August 1995, Interscope Records, Inc., filed suit against her in the United States District Court for the Central District of California *(Tucker I)*, alleging that she had induced a breach of contract between Death Row Records, Inc., and Interscope. Interscope and Death Row voluntarily withdrew that suit. Then, in July

1. "Gansta rap" has been described as "a form of hip hop music that became the genre's dominant style in the 1990s, a reflection and product of the often violent lifestyle of American inner cities afflicted with poverty and the dangers of drug use and drug dealing. The romanticization of the outlaw at the centre of much of gangsta rap appealed to rebellious suburbanites as well as to those who had firsthand experience of the the harsh realities of the ghetto. Encyclopedia Britannica, "Gangsta Rap" <http://www.britannica.com/bcom/eb/article/3/0,5716,128693+1,00.html.> Prominent gangsta rap groups are described as "present[ing] tales of gangs and violence," "offer[ing] hard-hitting depictions of crack-cocaine related crime," and featuring "a marriage of languid beats and murderous gang mentality." *Id.*

1997, Mrs. Tucker and her husband, William Tucker, filed a complaint in the United States District Court for the Eastern District of Pennsylvania *(Tucker II)*, alleging that the lyrics in two songs by deceased rapper Tupac Shakur on an album called *All Eyez On Me* had attacked Mrs. Tucker using "sexually explicit messages, offensively coarse language and lewd and indecent words" and that she had received death threats because of her activities. Named as defendants were Shakur's estate; Interscope, which had produced Shakur's album; and four other companies, including TimeWarner, Inc., which allegedly maintained a financial interest in Interscope. Asserting claims for intentional infliction of emotional distress, slander, and invasion of privacy, Mrs. Tucker sought damages for medical expenses and mental injury. In paragraph 50, the Complaint alleged that her "husband, William Tucker has as a result of his wife's injuries, suffered a loss of advice, companionship and *consortium*" Tucker II Compl. ¶ 50 (emphasis added), App. at 23. Loss of consortium means loss by one spouse of "whatever of aid, assistance, comfort, and society [one spouse] would be expected to render or to bestow upon [the other]." *Hopkins v. Blanco*, 302 A.2d 855, 856 (Pa. Super. 1973), *aff'd*, 320 A.2d 139 (Pa. 1974). Loss of consortium includes, but is not limited to, "impairment of capacity for sexual intercourse." *Restatement (Second) of Torts* § 693(1) (1977); *see also* W. Page Keeton, *Prosser and Keeton on* Torts 931 (5th ed. 1984).

The filing of the Tuckers' lawsuit spawned numerous articles that focused on the "loss of consortium" claim. Among them was an article printed by the *Philadelphia Daily News* on August 2, 1997, in which the lawyer representing Shakur's estate, Richard Fischbein, was quoted as saying: "[I]t is hard for me to conceive how these lyrics could destroy her sex life . . . but we can only wait for the proof to be revealed in court." App. at 30. Following the *Philadelphia Daily News* article, wire and news services throughout the country picked up the story, and many of them quoted or paraphrased Fischbein's comment interpreting the Tuckers' claim as seeking compensation for damage to their sex life.

On August 20, 1997, *Newsweek* reporter Johnnie L. Roberts telephoned the Tuckers' attorney, Richard C. Angino, regarding an

upcoming *Newsweek* story about the lawsuit. According to Angino, he informed Roberts that, although loss of consortium could mean loss of sex in some cases, it did not mean that in this case. *See* App. at 645. Roberts disputes Angino's account of this conversation.

On August 26, 1997, Roberts interviewed Fischbein in connection with the story. Roberts's notes show that Fischbein told him that one of the claims in the Tuckers' complaint involved interference with sexual relations. In addition to speaking with Fischbein and Angino, Roberts read the complaint and looked up the definition of consortium before writing his article. On September 1, 1997, *Newsweek* printed an article written by Roberts and entitled "Grabbing at a Dead Star." The article stated: "Even C. Delores Tucker, the gangsta rap foe, wants a chunk [of Tupac Shakur's estate]. She and her husband claim that a lyrical attack by Tupac iced their sex life." App. at 90. Although the article did not mention the conversation between Roberts and Angino, it did quote Fischbein as commenting as follows regarding the loss-of-consortium claim: "I can't wait to hear the testimony on that subject." *Id.*

The next day, the Tuckers filed an amended complaint in *Tucker II* (the "First Amended Complaint"), which included an additional claim against Fischbein for making "false and misleading statements regarding the claim herein, through published statements that C. Delores Tucker filed suit because of a 'loss of her sex life.' " App. at 1711. The amended complaint was served on Fischbein and the other defendants, including TimeWarner, Inc.

On September 12, after he was served with the First Amended Complaint, Fischbein gave an interview to *Time* reporter Belinda Luscombe concerning the Tuckers' case. Luscombe stated in deposition that Fischbein had told her that "this was a lawsuit about emotional distress and one of the things affected were [sic] her sexual relationship with her husband." *See* App. at 2197. *Time* printed Luscombe's article, entitled "Shakur Booty," on September 15, 1997. *See* App. at 34. Although the article did not quote Fischbein, Luscombe admitted in her deposition that she based the article solely on her interview with Fischbein and on other articles,

most of which appear to be derived from Fischbein's initial comments to the press in early August.

On October 1, 1997, the Tuckers filed the complaint that is the subject of this action *(Tucker III)*. The complaint alleges that Fischbein, Time, Inc. ("Time"), and Newsweek, Inc. ("Newsweek") defamed the Tuckers by characterizing their loss of consortium claim in Tucker II as a claim for loss of sexual relations. Specifically, the Tuckers maintain that Mrs. Tucker's reputation as a moral leader was compromised when Time and Newsweek printed Fischbein's characterization of her suit as one to recover for the lyrics' effect on her sex life.

Time, Newsweek, and Fischbein each moved for summary judgment, and the District Court granted their motions, holding that the statements in question were not capable of a defamatory meaning and, alternatively, that the Tuckers, who conceded that they were "public figures," could not adequately prove that the defendants acted with "actual malice." Although the defendants had also contended that the Tuckers could not prove that the statements were false, the Court made no explicit holding on that question. This appeal followed.

I.

"[A]lthough a defamation suit has profound First Amendment implications, it is fundamentally a state cause of action." *McDowell v. Paiewonsky*, 769 F.2d 942, 945 (3d Cir. 1985). In this appeal, our first duty is to resolve a question of state law, *i.e.*, whether the Tuckers adduced sufficient evidence to show that the statements in question were defamatory under Pennsylvania law. If the plaintiffs satisfied that burden, we must then determine if the First Amendment precludes recovery. *See Steaks Unlimited, Inc. v. Deaner*, 623 F.2d 264, 270 (3d Cir. 1980).

Under Pennsylvania law, a defamation plaintiff bears the burden to show:

> (1) The defamatory character of the communication.
>
> (2) Its publication by the defendant.

(3) Its application to the plaintiff.

(4) The understanding by the recipient of its defamatory meaning.

(5) The understanding by the recipient of it as intended to be applied to the plaintiff.

42 Pa. Cons. Stat. Ann. § 8343(a) (1998). Under Pennsylvania law, the court must decide at the outset whether a statement is capable of defamatory meaning. *See Thomas Merton Ctr. v. Rockwell Int'l Corp.*, 442 A.2d 213, 215-16 (Pa. 1981). If the court determines that the statement is capable of a defamatory meaning, the jury must then decide whether the recipient actually understood the statement to be defamatory. *See Corabi v. Curtis Publ'g Co.*, 273 A.2d 899, 904 (Pa. 1971).

A statement is defamatory if "it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Id.* (citing *Birl v. Philadelphia Elec. Co.*, 167 A.2d 472, 476 (Pa. 1960)). *Accord Restatement (Second) of Torts § 559.* A court must examine the meaning of the allegedly defamatory statement in context, *see Beckman v. Dunn*, 419 A.2d 583, 586 (Pa. Super. 1981), and must evaluate "the effect [it] is fairly calculated to produce, the impression it would naturally engender, in the minds of the average persons among whom it is intended to circulate." *Corabi*, 273 A.2d at 907. While it is not enough that a statement is embarrassing or annoying, *see Bogash v. Elkins*, 176 A.2d 677, 678 (Pa. 1962), a court should not dismiss a complaint unless it is "clear that the publication is incapable of a defamatory meaning." *Vitteck v. Washington Broad. Co.*, 389 A. 2d 1197, 1200-01 (Pa. Super. 1978).

The statements at issue here were the following:

(1) The statement in *Time's* September 22, 1997, article, "Shakur Booty," that *"[t]he prize for the most bizarre suit . . . goes to anti-rap warrior C. Delores Tucker, who claims that remarks made about her on Shakur's Album All Eyez on Me*

caused her so much distress that she and her husband have not been able to have sex. She wants $10 million." App. at 1634.

(2) The statement in *Newsweek's* September 1, 1997, article, "Grabbing at a Dead Star," that *"[Mrs. Tucker] and her husband claim that a lyrical attack by Tupac iced their sex life."* App. at 90.

(3) Fischbein's comment, quoted in an August 2, 1997, *Philadelphia Daily News* article, that *"[i]t's hard for me to conceive how these lyrics could destroy her sex life . . . but we can only wait for the proof to be revealed at trial."* App. at 29.

(4) Fischbein's August 20, 1997, statement to *Newsweek* columnist Johnnie L. Roberts that Mrs. Tucker was bringing suit, in part, to recover for damage to her sex life, and his statement, quoted in the *Newsweek* article, that *"I can't wait to hear her testimony on that subject."* App. at 31.

(5) Fischbein's statement to Belinda Luscombe of *Time* that Tucker II *"was brought for emotional distress and that part of that was that . . her sexual relationship with her husband was affected."* App. at 2197.

The District Court held that none of these statements could have a defamatory meaning. The Court concluded that, although the statements might be annoying or embarrassing, they could not support a cause of action for defamation. The Court stated: "There is a vast difference between being annoyed and/or embarrassed on the one hand, and being disgraced and ridiculed to the extent that one's reputation is harmed and lowered in the estimation of the community, on the other." Dist. Ct. Op. at 6.

We cannot agree with the District Court's analysis. Statements considerably milder than or comparable to those at issue here have been held by the Pennsylvania Supreme Court to be capable of a defamatory meaning. For example, in Birl v. *Philadelphia. Elec. Co.*, 167 A. 2d 472 (Pa. 1960), the Pennsylvania Supreme Court held that a statement that an employee quit without notice was capable of a

defamatory meaning because recipients could conclude that the employee lacked honor and integrity "and was not a person to be relied upon insofar as his business dealings were concerned." *Id.* at 476. In *Cosgrove Studio & Camera Shop v. Pane*, 182 A.2d 751 (Pa. 1962), the Pennsylvania Supreme Court held that an advertisement was capable of a defamatory meaning because it implied that a competitor had bad business practices and might lead a recipient to question the competitor's integrity. *Id.* at 754.

Reading the statements at issue in this case in context and looking at the impression that they were likely to engender in the minds of the average reader, we conclude that each is capable of a defamatory meaning. Mrs. Tucker has led a campaign against the immorality of gangsta rap and those who profit from it. The statements made by the defendants—to the effect that Mrs. Tucker and her husband brought a $10 million lawsuit because Shakur's lyrics damaged their sex life—carry numerous disparaging implications. Because of the inherent implausibility of the idea that lyrics alone could cause millions of dollars of damage to a couple's sexual relationship, the statements were capable of making the Tuckers look insincere, excessively litigious, avaricious, and perhaps unstable. Furthermore, the statements tended to suggest that the Tuckers are hypocritical, that after condemning the gangsta rap industry for profiting from pornography, the Tuckers were only too willing to open up their own sex life for public inspection in order to reap a pecuniary gain. In the more colloquial language used by the defendants themselves, the statements suggested that the Tuckers were "[g]rabbing [a]t a [d]ead [s]tar['s]" "[b]ooty" and were willing to take the witness stand at trial and publicly provide the testimony about their sex lives that Fischbein "[couldn't] wait to hear." Such statements were capable of lowering the Tuckers' reputation in the eyes of the community and of causing others to avoid associating with them.

It is worth noting that, not only were the defendants' statements capable of a defamatory meaning, but the Tuckers adduced evidence that their reputations were in fact adversely affected. *See* 42 Pa. Cons. Stat. Ann. § 8343(a)(4) (requiring plaintiff to prove that

the recipient understood the statement as defamatory). In a *Philadelphia Daily News* article dated August 6, 1997, the author stated: "I also appreciate how some people felt betrayed when she filed a $10 million suit that has trivialized her and her movement. For a week now, even some of her most consistent supporters have been questioning her motives and snickering over the suit's allegation that her sex life has been ruined by a couple of Tupac Shakur raps." App. at 2143. An August 17, 1997, *Chicago Sun-Times* article noted: "[I]n my eyes Tucker has suffered a self-inflicted blow to her credibility. . . . Seems to me the real humiliation comes when a woman who has fought hard against gangsta rap makes the very personal and embarrassing claim that a couple of those very songs ruined her love life." App. at 265-66.

In short, the District Court erred when it held that the defendants' statements were not capable of a defamatory meaning under Pennsylvania law. The statements had the tendency to lower the Tuckers in the estimation of the community and to deter third persons from associating with them. We must therefore examine whether the First Amendment poses a bar to the Tuckers' claim.

II.

When a public official or public figure sues for defamation, the First Amendment demands that the plaintiff prove both that the statement was false and that it was made with "actual malice." *Hustler Magazine v. Falwell*, 485 U.S. 46, 52 (1988) (emphasis in original omitted); *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964); *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 162-65 (1967) (Warren, C.J., concurring) (applying the *New York Times* standard to public figures); *U.S. Healthcare v. Blue Cross of Greater Philadelphia*, 898 F.2d 914, 931 (3d Cir. 1990).

A. Actual malice

Under *New York Times v. Sullivan* and its progeny, actual malice means "knowledge that [the statement] was false or . . . reckless disregard of whether it was false or not." *New York Times*,

376 U.S. at 279-80. A public figure must adduce "sufficient evidence to permit the conclusion that the defendant entertained serious doubts as to the truth of his publication." *St. Amant v. Thompson*, 390 U.S. 727, 731 (1967). "[A] court ruling on a motion for summary judgment must be guided by the *New York Times 'clear and convincing' evidentiary standard in determining whether a genuine issue of actual malice exists—that is, whether the evidence presented is such that a reasonable jury might find that actual malice has been shown with convincing clarity.*" *Anderson v. Liberty Lobby*, 477 U.S. 242, 257 (1986).

1. Fischbein

The Tuckers assert two grounds for holding that Fischbein acted with actual malice. First, the Tuckers argue that Fischbein, as a lawyer, should have known that a claim for loss of consortium may not have anything to do with damage to sexual relations. It follows, the Tuckers contend, that Fischbein was at least reckless when he told the press that Mrs. Tucker was trying to recover for injury to her sex life.

We reject this argument. A claim for loss of consortium *may* concern damage to sexual relations and, with respect to the period prior to the service of the Tuckers' First Amended Complaint, there is no evidence that Fischbein was informed that Mr. Tucker's consortium claim did not refer to damage to sexual relations. Nor is there evidence from which a jury could find that Fischbein entertained serious doubts about the truthfulness of his statements at any time before the filing of the First Amended Complaint. Consequently, the record is insufficient to show by clear and convincing evidence that Fischbein was guilty during this period of anything more than negligence in jumping to the conclusion that Mr. Tucker's loss-of-consortium claim related, at least in part, to sex. *See St. Amant*, 390 U.S. at 731; *Time, Inc. v. Pape*, 401 U.S. 279, 290 (1971) ("The deliberate choice of an interpretation, though arguably reflecting a misconception, was not enough to create a jury issue of 'malice' under *New York Times*."). The Tuckers point out that Fischbein, as the representative of Shakur's estate, had a motive for discrediting

Mrs. Tucker, but circumstantial evidence of Fischbein's motive alone cannot satisfy the actual malice standard.

The Tuckers' second argument regarding Fischbein, however, does have merit. As previously noted, on August 27, 1997, the Tuckers filed their First Amended Complaint, which added Fischbein as a defendant and sought millions of dollars in damages. The basis for adding Fischbein was set out in Paragraph 46, which averred that Fischbein had "made false and misleading statements regarding the claim herein, *through published statements that C. Delores Tucker filed suit because of a 'loss of her sex* life.' " App. at 1711-12 (emphasis added). It is undisputed that Fischbein was personally served with this complaint before his interview with *Time* magazine reporter Belinda Luscombe on September 12, 1997.[2] Nevertheless, according to Luscombe's deposition, Fischbein told her during this interview that the Tuckers were attempting to recover for damage to their sexual relationship.

Based on this sequence of events, we are convinced that a reasonable jury could find by clear and convincing evidence that, at least as of the date of the service of the First Amended Complaint, Fischbein had actual knowledge that the Tuckers were not seeking to recover for damage to their sexual relationship. Since the First Amended Complaint alleged that Fischbein had defamed the Tuckers by stating that they were attempting to recover for damage to their sexual relations, a reasonable jury could certainly conclude that an attorney who read the complaint would understand that the Tuckers were not going to attempt to recover for such damage. (Indeed, it would be hard to interpret the First Amended Complaint any other way.) Fischbein states that he did not read the First Amended Complaint before speaking to Luscombe, but a reasonable jury could believe that a person who is added as a defendant in a multi-million dollar lawsuit is very likely to read the complaint shortly after receiving it in order to see why he or she has been sued.

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2. This argument does not apply to any statements made by Fischbein prior to August 27, 1997, including the comments published by the *Philadelphia Daily News* and the August 26 interview with Roberts of *Newsweek*.

A reasonable jury could disbelieve Fischbein's story and find by clear and convincing evidence that Fischbein did read the First Amended Complaint before the interview. We must therefore reverse the judgment of the District Court insofar as it dismissed the Tuckers' claim against Fischbein with regard to the statements to Luscombe.

The dissent disagrees with our conclusion on this point because, in the dissent's view, "[t]he language of the Amended Complaint, in the context of the Tuckers' previous statements and actions, was insufficient to indicate a change in their attitude toward alleging a loss of sexual relations." Dissent at 24. But even if we agreed with the dissent's characterization of the Tuckers' prior statements,[3] the following stark facts remain: (a) the Amended Complaint added Fischbein as a defendant and was served upon him; (b) the Amended Complaint asserted that Fischbein had defamed the Tuckers by stating that "C. Delores Tucker filed suit because of a 'loss of her sex life' " (App. at 1711-12); and (c) the Amended Complaint sought millions of dollars in damages. Surely a reasonable jury could find, by clear and convincing evidence, that Fischbein knew, after reading the Amended Complaint, that, whether or not the Tuckers had previously been seeking to recover for damage to their sexual relationship, they were no longer doing so.[4]

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3. The dissent seems at times to make findings of fact. For example, the dissent opines that "the statements made by the Tuckers and their attorney were deliberately cagey and equivocal so that they could, if they wished, introduce evidence of impotence and sexual disfunction at trial." Dissent at 22. This amounts to a finding of fact regarding the intent of the Tuckers and their attorney, and it is the province of the trier of fact, to make such a finding.

4. The dissent "find[s] it ironic that [we] believe[ ] there could be actual malice in a statement so similar to [the following statement] attributed to Mr. Tucker in *The Philadelphia Tribune*" (Dissent at 27):

> Pointedly asked how the lyrics could affect his sex life, he said, "That's just a brief reference [in the lawsuit]—a small part of it. We have to represent the situation as accurately as we can and the only way to experience it is to have it happen to you."

2. Roberts and Newsweek

The Tuckers' case against Roberts and Newsweek includes some evidence from which a reasonable jury could infer actual malice, but not the clear and convincing evidence needed to survive summary judgment. Accordingly, we must affirm the District Court's grant of summary judgment in favor of Roberts and Newsweek. Viewing the evidence in the light most favorable to the Tuckers, their attorney, Richard C. Angino, spoke with Roberts on August 20, 1997, six days before Roberts wrote "Grabbing at a Dead Star." According to Angino, he told Roberts in the course of this phone call that "consortium can mean, in some cases, sex. I said most of the time it doesn't and it doesn't in this case." Angino Dep., App. at 636.

Other statements in Angino's deposition severely weaken the Tuckers' position, however, and make it impossible for them to satisfy the clear and convincing standard. For instance, when asked exactly what he said to put Roberts on notice that the Tuckers' claim did not involve impairment of sexual relations, Angino replied: "I said only in the rarest of cases would you have a count that actually involves sex. I'm *under oath, so I cannot say to you that I said specifically, this case does not involve sex.*" App. at 431 (emphasis

---

App. at 1631 (brackets in original).

At most, however, this statement may show Mr. Tucker's intent at the time of the article, in August 1997. It hardly establishes that the Tuckers were seeking to recover for damage to their sexual relations after they later filed the Amended Complaint.

Moreover, the dissent's interpretation of the statement attributed to Mr. Tucker in the article, while certainly reasonable, is not compelled. Without knowing the exact question posed by the reporter (and the question is merely paraphrased in the article), it is not possible to rule out the possibility that Mr. Tucker was simply referring to his claim for loss of consortium, which need not necessarily have pertained to sex. In other words, he may have said that *the loss of consortium claim* was "just a brief reference [in the lawsuit]—a small part of it." If evidence of this statement is admitted at trial, it will be for the trier of fact to interpret it.

added). Actual malice requires a plaintiff to establish that the defendant had a *subjective* belief that the statement was false when made, and Angino's equivocation about the exact words he used defeats any hope the Tuckers might have of proving actual malice on the part of Roberts or Newsweek by clear and convincing evidence. Therefore, we affirm the District Court's entry of summary judgment in favor of those parties.

3. Luscombe and Time

The Tuckers set forth 24 theories under which, they assert, it could be found that Belinda Luscombe and Time acted with actual malice in connection with the "Shakur Booty" article of September 15, 1997. Many of these theories are grounded on allegations of poor journalistic practices—*e.g.*, that Luscombe had a preconceived storyline; that she did not follow Time's editorial guidelines; that she failed to conduct a thorough investigation; and that she copied from other stories but changed their language without a factual basis. As the District Court found, these theories of actual malice are without support in the case law. While we will discuss only a few of these theories below, we have carefully considered and rejected all of them.

The Supreme Court has made clear that even an extreme departure from professional standards, without more, will not support a finding of actual malice. *See Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 665 (1989). Likewise, a failure to investigate, standing alone, does not constitute actual malice. *See St. Anant v. Thompson*, 390 U.S. at 730-31; *Marcone v. Penthouse Int'l Magazine for Men*, 754 F.2d 1072, 1089 (3d Cir. 1985).

The Tuckers assert that Luscombe avoided the truth by relying on biased sources while ignoring the Tuckers' news release, which explained the import of their Complaint. Although the Supreme Court has held that purposeful avoidance of the truth may support a claim of actual malice, the evidence here falls short. In *Harte-Hanks*, the Court held that there was sufficient evidence of actual malice where, among other things, a reporter failed to interview a

key witness to events being reported in a story, and the circumstances suggested that this was done for fear that the witnesses' statement might contradict the story the paper was committed to running. *See* 491 U.S. at 682-83. Likewise, in *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967), the Court found actual malice when the *Saturday Evening Post* failed to make adequate investigative efforts in the face of notification that the report they were about to print was false. *Id.* at 169-70. The element present in *Harte-Hanks* and *Butts* but lacking here is evidence from which a reasonable jury could infer that Luscombe doubted the veracity of her story. *See Harte-Hanks*, 491 U.S. at 692.

The Tuckers assert that the service of the First Amended Complaint on Time-Warner, Inc., the parent corporation of Time, Inc., which publishes *Time* magazine and employs Luscombe, should have put Luscombe on notice that the Tuckers did not seek recovery for injury to their sex life. This argument is far-fetched. Time-Warner, Inc., a huge media and entertainment conglomerate, was served because it was one of the original defendants due to its alleged connection with Interscope Records. There is no evidence that Luscombe or anyone else actually involved with the "Shakur Booty" article was given or read the First Amended Complaint, and unlike Fischbein, neither Luscombe nor anyone else employed by *Time* magazine was named as a defendant in that complaint. The Tuckers have simply adduced no evidence (let alone clear and convincing evidence) that Luscombe or anyone else involved with the "Shakur Booty" article was aware that the Tuckers did not intend to include injury to their sex life as a component of the loss of consortium claim.

We likewise see no merit in the Tuckers' argument that Luscombe and Time acted with actual malice because they copied other stories but then changed their language without a factual basis. Although the circumstances under which an article is changed may sometimes be enough to show actual malice, the present case does not fall into that category. This case is readily distinguishable from *St. Surin v. Virgin Islands Daily* News, *Inc.*, 21 F.3d 1309 (3d Cir. 1994). In *St. Surin*, a newspaper reporter interviewed an Assistant

United States Attorney who confirmed that St. Surin was being investigated but refused to comment on whether charges would be brought. An editor, however, "changed it to read that the government expected to file charges against St. Surin the following week." *Id.* at 1318. We held that the evidence, viewed in the light most favorable to St. Surin, showed that the editor was aware of facts showing that her changes to the article in question made it false. *See id.*

In this case, there is no comparable evidence. The "Shakur Booty" article was clearly derived in large part from previously published articles and did not change the import of those articles in any material way. Moreover, as discussed above, there is no evidence here from which a reasonable jury could find that Luscombe was on notice that the facts related in her story were false. Accordingly, we affirm the District Court's grant of summary judgment in favor of *Time* and Luscombe.

B.

Although the District Court based its judgment only on defamatory meaning and actual malice, it stated: "Counsel for all defendants have made various other arguments, not the least of which is that the statements were true. By not commenting on them, I have not necessarily rejected them." Dist. Ct. Op. at 13. On appeal, the defendants argue that the decision of the District Court may be affirmed on the alternative ground that the Tuckers have not adduced sufficient evidence that any of the challenged statements were false when made. Although we may affirm a decision on an alternative ground, *see, e.g., Erie Telecomms., Inc. v. City of Erie*, 853 F.2d 1084, 1089 n.10 (3d Cir. 1988), we decline to do so here.

Truth is an affirmative defense under Pennsylvania law, *see* 42 Pa. Const. Stat. Ann. § 8343(b)(1), but the United States Supreme Court has held that a public figure must bear the burden of proving falsity. *See Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776 (1985) (holding that "the common law's rule of falsity—that the defendant must bear the burden or proving truth—must similarly fall here to a constitutional requirement that the plaintiff bear the

burden of showing falsity"); *see also Steaks Unlimited, Inc. v. Deaner*, 623 F.2d 264, 274 n.49 (3d Cir. 1980) (suggesting that Pennsylvania's practice of placing the burden of proving truth on the defendant is probably unconstitutional); *Dunlap v. Philadelphia Newspapers, Inc.*, 448 A.2d 6, 13-14 (Pa. Super. 1982) (same). Thus, even though Fischbein's comments to Luscombe are capable of a defamatory meaning, and even though he may have uttered them with actual malice, Fischbein cannot be held liable unless the Tuckers can prove that the comments were false.

We conclude that the Tuckers have pointed to proof that is sufficient to show, either by a preponderance or by clear and convincing evidence,[5] that Fischbein's statements to Luscombe after the filing of the First Amended Complaint were false.[6] The First Amended Complaint alleged that Fischbein had defamed the Tuckers when he said that they were trying to recover for damage to their sexual relations. In light of that allegation, it seems clear—and a reasonable jury could certainly find—that the First Amended Complaint itself did not seek to recover for such damage. (Surely a reasonable jury could find that, if the Tuckers' case had gone to trial under the Amended Complaint, the Tuckers did not intend to seek to recover both on the theory that Mr. Tucker suffered a loss of consortium and that Fischbein defamed them by asserting that they intended to recover for a loss of consortium.) Fischbein, however, supposedly told Luscombe that "this was a lawsuit about emotional

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5. The Supreme Court has explicitly declined to decide whether the plaintiff must prove falsity by a preponderance of the evidence or by clear and convincing evidence. *See Harte-Hanks*, 491 U.S. at 661 n.2 (declining to resolve the issue, but acknowledging disagreement among the circuits). *Compare Firestone v. Time, Inc.*, 460 F.2d 712, 722-23 (5th Cir. 1972) (Bell, C.J., concurring) (arguing for a clear and convincing standard) *with Goldwater v. Ginzburg*, 414 F.2d 324, 341 (2nd Cir. 1969) (suggesting a preponderance of the evidence standard) and *Rattray v. National City*, 51 F.3d 793, 801 (9th Cir. 1995) (adopting *Goldwater*).

6. Because we have held that there is not sufficient evidence that Fischbein acted with actual malice prior to that date, we need not and do not decide whether there was enough evidence to show that the statements he made during that period were false.

distress and one of things affected were [sic] her sexual relationship with her husband." App. 2197. We hold that there was sufficient evidence of falsity to go to the jury.

III.

Finally, we hold that the District Court correctly denied the Tuckers' motions to depose in-house counsel at *Time* and *Newsweek*. This Court exercises plenary review over a discovery order regarding claims of attorney-client privilege. *See Livingstone v. North Belle Vernon Borough*, 91 F.3d 515, 524 (3d Cir. 1996). The communications with in-house counsel involved here were clearly for the purpose of rendering legal advice and therefore are privileged. The Tuckers argue that the privilege was waived because in-house counsel reviewed stories "in the regular course of business." This argument is frivolous. That reporters regularly consult with in-house counsel to discuss potential liability for libel does not thereby deprive those communications of the protection of the attorney-client privilege. *See, e.g., Upjohn Co. v. United States*, 449 U.S. 383, 394 (1981) (holding that communications between corporate counsel and a corporation's employees made for the purpose of rendering legal advice are protected by the attorney-client privilege); *Liberty Lobby, Inc. v. Dow Jones* & Co., 838 F.2d 1287, 1302 (D.C. Cir. 1988) ("Pre-publication discussions between libel counsel and editors or reporters would seem to come squarely within the scope of the privilege as defined in *Upjohn*.").

IV.

In sum, we affirm the District Court's grant of summary judgment as to *Time* and *Newsweek*, but reverse in part as to Fischbein. We also affirm the District Court's denial of the Tuckers' motion to compel the deposition of the in-house counsel at *Time* and *Newsweek*. The case is remanded in part for proceedings consistent with this opinion.

NYGAARD, *Concurring and Dissenting.*

I agree with much of what the Majority says in its well-reasoned opinion for the court. I disagree, however, with its conclusion with respect to defendant Richard Fischbein and therefore respectfully dissent. I conclude that the District Court did not err; that a reasonable jury could *not* find that Fischbein acted with actual malice when speaking to *Time* magazine reporter Belinda Luscombe; and, that summary judgment should be affirmed in its entirety.

I begin with the Majority's conclusion that "prior to the service of the Tucker's first Amended Complaint, there is no evidence that Fischbein was informed that Mr. Tucker's consortium claim did not refer to damages to sexual relations." I agree, but I believe that the Majority dramatically understates the point. There is a substantial amount of uncontradicted evidence suggesting that, prior to the filing of their Amended Complaint, the Tuckers *did* intend to include sexual damages within their loss of consortium claim. For clarity, I will summarize this evidence in list form below:

I. In his deposition, the Tuckers' attorney, Mr. Angino, stipulated that at the time the suit was commenced, the original complaint itself provided no indication that a claim for interference with sexual relations was *not* being pursued, and that someone reading the Tuckers' complaint might assume that it alleged damage to sexual relations. (App. 566-70). In my opinion, unless otherwise stated, it is axiomatic that a loss of consortium claim includes a claim for loss of sexual relations.

II. Mr. Angino also admitted in his deposition that when the suit was initiated, *he* was not sure whether the Tuckers sought recovery for damage to their sexual relations. (App. 576). He stated that "the purpose of the consortium count was to cover everything . . . every way in which Mr. Tucker was affected, every way." (App. 575). The record does not contain any facts to the contrary.

III. The Tuckers themselves have failed to state, either in their depositions or in affidavits, that they had ruled out any

facet of their consortium claim at the time they originally filed it.

IV. The report of Dr. Harold Mignott, Mr. Tucker's physician, reveals that Mr. Tucker had "a significant amount of difficulty with impotence" at the same time that he suffered a "significant amount of stress" resulting from the "harassment" and "investigation" of both himself and his wife. The report was dated approximately one month before the Tuckers filed their claim for loss of consortium. (App. 583).

V. On July 31, 1997, the Tuckers issued a news release about the *Tucker II* lawsuit.[7] Nothing in the press release disclaimed damages for interference with sexual relations. (App. 2072-73).

VI. After observing the media's reaction to the consortium claim, Mr. Tucker had the opportunity in at least three separate interviews to clarify that he and his wife were not seeking compensation for injury to their sexual relations. Instead, Mr. Tucker confirmed in all three interviews that interference with sexual relations was indeed an element of their claims. (App. 1630-31; 2142-43; 2145).

VII. On August 13, 1997, in an interview with *Philadelphia Weekly*, Mr. Angino had a similar opportunity to clearly state for the public record that the Tuckers were foregoing any

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7. The complaint in *Tucker II* is itself a confusing farrago of missteps and errors. Appellants' attorney never discussed the loss of consortium claim with the Tuckers. (App. 518). The complaint was drafted by a law student. It misrepresented one song by taking "snippets of words from actual lyrics, words that are separated by many, many verses and run[ning] them together as if they are a continuous statement," creating what appellants' attorney now admits was "a gross and deliberate misrepresentation." (App. 534). The appellant's attorney neither listened to nor read the lyrics of the song that he alleges was defamatory. He never conducted a fact check of any of the critical allegations in the complaint. Indeed, he did not even sign it, nor is it clear from the record that he even read the final draft. His wife (who is not an attorney) signed it for him.

claims stemming from interference with sexual relations. However, Mr. Angino failed to do so. Instead, he stated that loss of consortium "is a standard addition to lawsuits of this type and refers to *all aspects* of the marital relationship, not necessarily sex." (App. 2148-49) (my emphasis).

VIII. On August 21, 1997, the Tuckers issued yet another press release. It again failed to disavow any claim arising out of Mr. Tucker's impotency or injury to the Tuckers' sexual relationship. Instead, the release confirmed the existence of such a claim and expressed the Tuckers' frustration that too much of the media's attention was focused on that aspect of the case: " 'All the media gleefully jumped on the so-called sex part in the suit that called attention to loss of consortium, which was put in there by my husband Bill, not by me,' [Mrs. Tucker] added, obviously nettled." (App. 464).

IX. The Tuckers have admitted that neither they, nor Mr. Angino, nor anyone on their behalf, ever called Fischbein, at any time, to correct his misunderstanding of the Tuckers' loss of consortium claim. (App. 571, 1968).

The Tuckers have failed to provide *any* evidence, other than the language in their Amended Complaint, to suggest that they did not intend to claim loss of sexual relations. Instead, it is obvious to me that the statements made by the Tuckers asnd their attorney were deliberately cagey and equivocal so that they could, if they wished, introduce evidence of impotence and sexual dysfunction at trial.[8]

In spite of substantial evidence to the contrary, the Tuckers still claim that all of Fischbein's statements were made with actual malice; that is, with the "knowledge that [they were] false or with

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8. Another way of approaching this issue is to ask whether at trial, given the general loss of consortium that the Tuckers originally alleged, it would have been proper for the District Court to allow introduction of evidence of Mr. Tucker's sexual dysfunction. The answer clearly is yes.

reckless disregard of whether [they were] false or not." *New York Times v. Sullivan*, 376 U.S. at 279-80. According to the Majority, the Tuckers present two independent arguments in support of their position. Although I remain unconvinced that they clearly articulate even one, I will, for the sake of discussion, address both arguments in turn.

First, the Tuckers seem to suggest that Fischbein's legal training put him on notice that loss of consortium does not always imply harm to sexual relations. According to their brief:

> Fischbein, who is a lawyer who knows the definition of consortium, knew at the time that he talked to the *Los Angeles Times* and the *Philadelphia News* and all of the other newspapers, including *Time* and *Newsweek*, that Mrs. Tucker did not claim in the Tucker I complaint that her sex life had been destroyed by the lewd lyrics of Tupac Shakur . . . Certainly a jury could find that Mr. Fischbein's uttering his sexual spin throughout this period constituted malice as defined by the Supreme Court.

(Appellants' Br. at 46-47). The Majority quickly dismisses this argument, and there is no need to consider it further, except that I question the Majority's suggestion that Fischbein may have been negligent during the period prior to the filing of the Amended Complaint. Again, I emphasize that *all* of the evidence before the court indicates that the Tuckers, at least originally, *did* intend to pursue damages for loss of sexual relations. It is hard for me to imagine how Fischbein may have been negligent in any way.

Until this point, my concerns with the Majority's opinion have been fairly minor. I strongly disagree, however, with its disposition of the Tuckers' second main argument. According to the Majority, the Amended Complaint clearly disavowed any intent to pursue damages for loss of sexual relations. As such, a jury could find that Fischbein had read the complaint, and that his subsequent comments to *Time* magazine constituted actual malice.[9] Although I

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9. I agree with the Majority that a reasonable jury could find, in light of the high stakes surrounding the law suit, that Fischbein had read the Amended

readily admit that this position is more compelling than the Tuckers' first argument, I still cannot agree. The language of the Amended Complaint, by itself, is simply insufficient to convince a reasonable jury, under a clear and convincing evidence standard, that Fischbein had actual knowledge that the Tuckers were not seeking to recover damages for loss of sexual relations

Before explaining my position, I want to be absolutely clear about two points. First, I agree with the Majority that, other than the Amended Complaint, "there is no evidence" that Fischbein acted with actual malice.[10] Thus, even under the Majority's decision,

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Complaint prior to his interview with *Time*. I disagree, however, with the Majority's conclusory statement that "it would be hard to interpret the First Amended Complaint any other way." In light of the Tucker's previous statements, and their penchant for ambiguity, I do not believe that a reasonable jury could establish actual malice based solely upon the Tuckers' five line paragraph.

10. The Tuckers contend that they indicated, through personal interviews and statements by their attorney, that they did not intend to allege loss of sexual relations. This is simply not supported by the record. For example, in their Second Amended Complaint, they claim that their attorney told a Newsweek Reporter "*unequivocally* that the complaint did not allege . . . that the actions of Defendants related in the [original] complaint had anything to do with their sex life." (App. 24). Their attorney's signature appears on this complaint. During his deposition, however, Mr. Angino admitted that, "I said only in the rarest of cases would you have a count that actually involves sex. I'm under oath, so I cannot say to you that I said specifically, this case does not involve sex." (App. 646). This is but one of many examples where The Tuckers were vague and ambiguous in their public statements and in their declarations to this Court. The Tuckers also argue that the *Webster's* dictionary definition of consortium supports their case. (App. 25). I did a quick check to verify this claim. Using the Internet (*see www.dictionary.com*, accessible via *www.websters.com*). *I* obtained the following definition of consortium:

> 3. *Law.* The right of a spouse to the company of, help of, affection of, and sexual relations with his or her mate.

Unless this definition has changed radically in the past three years, *Webster's* cuts strongly *against* the Tuckers. In sum, none of this "evidence" is sufficient to persuade a reasonable jury that any of the defendants acted with actual malice in "misinterpreting" the Tuckers' claims.

the Tuckers' *entire* claim rests solely upon the language in the Amended Complaint. As the Tuckers admit in their brief, only two paragraphs, out of the seventy-one contained in the complaint, address the question of sexual relations:

> 45. Defendant [Fischbein] has continued to defame and harass plaintiff by holding her up in a false light even after the complaint in this matter was filed on June 21, 1997.
>
> 46. Defendant Fischbein made false and misleading statements regarding the claim [asserted in the original complaint], through published statements that C. Delores Tucker filed suit because of a "loss of her sex life." The statement was untrue, and defendant Attorney Fischbein should have known it was untrue.

(App. 1711-12). Second, the Tuckers filed the Amended Complaint on August 27, 1997. The only statements made by Fischbein *after* that date, and thus the only potentially actionable comments, were those to *Time* magazine reporter Belinda Luscombe. I agree with the Majority that *all* other comments were made without actual malice. Thus, the question over which the Majority and I disagree is a fairly narrow one, and I would characterize it in the following manner: After all of the Tuckers' actions and comments to the contrary, did the language in the Amended Complaint sufficiently clarify the parameters of the loss of consortium claim so that a reasonable jury could find that Fischbein's comments to *Time* magazine were made with a reckless disregard for the truth? I strongly believe the answer is no.

The language of the Amended Complaint, in the context of the Tuckers' previous statements and actions, was insufficient to indicate a change in their attitude toward alleging a loss of sexual relations. In spite of all the media attention, and all the harm that it supposedly caused, the complaint failed to contain a simple, categorical statement that the Tuckers were foregoing any claim for interference with sexual relations. Instead, it continued to allege that Mr. Tucker had "suffered a loss of . . . consortium," using *the very same language* that was contained in the original *Tucker II* complaint. (App. 1713).

The only addition was a short paragraph stating that *Mrs. Tucker* did not file the original suit because of a loss of sexual relations. It said nothing about *Mr. Tucker,* who had originally filed the loss of consortium claim. And, as their own attorney testified, "when you damage one spouse, you damage the other spouse in each and every way." (App. 566). My conclusion is underscored by the fact that one month later, and simultaneous with the filing of the complaint at issue in this appeal, the Tuckers filed a Second Amended Complaint to *Tucker II,* in which they unequivocally stated, *for the first time,* that they were not seeking damages for interference with sexual relations. This came far too late to serve as an effective form of notice to Fischbein.[11]

Even if the language of the complaint did clearly communicate the Tuckers' position, as the Majority so holds, it is not clear to me that this evidence *by itself* is enough to support a jury's finding of actual malice. I am deeply troubled by the fact that, in spite of

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11. With regard to the gravamen of this Second Amended Complaint, plaintiffs' attorney responded as follows in his deposition:

Q. And why did you feel there was a need to have—to file a Second Amended Complaint?

A. I couldn't believe how dense the defense were.

Q. And in the Second Amended Complaint, you placed a dictionary definition of consortium; is that correct?

A. That was a joke. It was really a joke.

Q. Well, wait a minute, sir. Are you saying that you were perpetrating a joke in a Federal Court Complaint; is that what you are telling me?

A. That's what I'm telling you. I said if I had to actually give you a dictionary definition...

Q. So you were you were playing around a little bit in a Federal Court Complaint; is that correct?

A. I was saying look consortium means this.

Q. So you were playing around a little bit.

A. You—you might say that.

App. 829-30.

intense media scrutiny and its concomitant pressures, the Tuckers never publicly clarified the nature of their suit or contacted Fischbein directly, until they filed the complaint in this case. In short, they did nothing to curb public scrutiny other than amend their original complaint to include *new* claims. After the numerous public comments and accusations by the Tuckers, it is simply unreasonable to require Fischbein to infer solely from the language of the Amended Complaint that the Tuckers had changed their position.

Finally, even if the Amended Complaint by itself was enough to support a jury finding of actual malice, I do not believe that Fischbein's comments were reckless. As previously discussed, the only comments made subsequent to the filing of the Amended Complaint were those to *Time* magazine on September 12, 1997. According to Luscombe's uncontradicted notes and testimony, Fischbein stated only that *Tucker II* "was brought for emotional distress and that part of that was that her sexual relationship with her husband was affected." (App. 2197). *Time* magazine did not quote Fischbein, and Luscombe's article relied heavily upon seven previous articles, all published in respected sources from *Rolling Stone* to *The Washington Post* prior to the filing of the Amended Complaint. I find it ironic that the Majority believes there could be actual malice in a statement so similar to one attributed to Mr. Tucker in *The Philadelphia Tribune* (*my* emphasis):

> Pointedly asked how the lyrics could affect his sex life, he said, 'That's just a brief reference [in the lawsuit]—*a small part of it*. We have to represent the situation as accurately as we can and the only way to experience it is to have it happen to you.'

As previously discussed, in addition to this statement, there is a substantial amount of evidence that indicates that the Tuckers originally did bring their suit, at least in part, to recover for loss of sexual relations. Regardless of whether they later changed their position, a literal reading of Fischbein's statement to *Time* reveals no "reckless disregard for the truth."

The record demonstrates that Fischbein, at the time of his conversation with *Time* magazine, (1) was not aware that the Tuckers intended to relinquish their claims for interference with sexual relations, and (2) even if he was, his comments were not reckless. As a result, I conclude that the Tuckers cannot meet their burden of demonstrating facts sufficient to show that Fischbein made any statements that he suspected were false. As such, I would affirm the grant of summary judgment in its entirety.

A True Copy:
Teste:

Clerk of the United States Court of Appeals
for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 99-1139

C. DELORES TUCKER;
WILLIAM TUCKER, her husband

v.

RICHARD FISCHBEIN; BELINDA LUSCOMBE;
NEWSWEEK MAGAZINE; JOHNNIE L. ROBERTS;
TIME INC.

C. Delores Tucker;
William Tucker,
Appellants

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
(D.C. No. 97-cv-06150)
District Judge: Honorable Ronald L. Buckwalter

Argued October 1, 1999
BEFORE: NYGAARD, ALITO, and ROSENN, *Circuit Judges*.

JUDGMENT

This cause came on to be heard on the record from the United States District Court for the Eastern District of Pennsylvania and was argued on October 1, 1999.

On consideration whereof, it is ordered and adjudged that the judgment of the District Court entered on February 9, 1999, be and the same is hereby AFFIRMED as to appellees Belinda Luscombe, Time, Inc., Johnnie L. Roberts, and Newsweek Magazine. The judgment is REVERSED as to appellee Richard Fischbein and the case is REMANDED for proceedings consistent with the opinion of this Court.

The parties shall bear their own costs.

ATTEST:
/s/Marcia M. Waldron
Clerk

DATED: 9 January 2001

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

NO. 97-6150

C. DELORES TUCKER and WILLIAM TUCKER, her husband,

Plaintiffs,

v.

RICHARD FISCHBEIN, TIME INC., BELINDA LUSCOMBE, NEWSWEEK MAGAZINE and JOHNNIE L. ROBERTS,

Defendants.

MEMORANDUM

BUCKWALTER, J. February 9 , 1999

Defendants Time Inc., Belinda Luscombe, Newsweek Magazine, Johnnie L. Roberts and Richard Fischbein have all filed motions for summary judgment.

I. COMPLAINT AGAINST TIME AND LUSCOMBE

Essentially, the complaint against Time and Luscombe is that despite (1) the dictionary definition of consortium; (2) interviews given by plaintiffs' attorney that plaintiffs' sex life had nothing to do with the complaint; and (3) the filing of an amended complaint with the allegation in paragraph 46 that "Defendant Fischbein made false and misleading statements that C. Delores Tucker filed suit because of a 'loss of her sex life.' " Luscombe, a writer, employee, servant and agent of Time, Inc. wrote an article in the People section of the September 22, 1997 issue entitled "Shakur Booty" stating:

> The prize for the most bizarre suit, however, goes to antirap warrior C. Delores Tucker, who claims that lewd remarks made about her on Shakur's album "All Eyez On Me" caused her so much distress that she and her husband have not been able to have sex. She wants $10 million.

Am. Compl. ¶22.

The above article, according to plaintiffs, constitutes a defamatory and malicious statement that Time and Luscombe knew was not the truth when written and knew that it would, upon publication, embarrass and humiliate plaintiffs. Plaintiffs' counsel admits that plaintiffs, Mr. and Mrs. Tucker, are public figures and that they therefore have the burden of proving that the *Time* article at issue was published with actual malice.

By way of a brief background, in September of 1993, the plaintiffs began a crusade against gangsta rap, which they viewed as being pornographic, drug oriented and misogynistic. Plaintiffs attempted through various methods to publicize their crusade. One method, among others, was by filing lawsuits. Other methods included appearances at shareholder meetings of large corporations, meeting throughout the country with public officials, attendance at Congressional hearings and before state legislatures, and leading of street demonstrations in Philadelphia, New York and Washington, D.C. It was, however, the filing of their lawsuit on July 21, 1997, against, among others, the estate of Tupac Shakur, a famous gangsta rap performer, which ultimately prompted *Time*'s September 15, 1997 article.

Before the *Time* article, approximately 60 newspapers and magazines published similar articles about the lawsuit. Among them were: *The Associated Press*, *The Baltimore Sun*, *The Dallas Morning News*, *The New York Daily News*, *The Philadelphia Daily News*, *The Minneapolis Star-Tribute*, *The Washington Post* and *Newsweek*, to

name a few. It is interesting to note that virtually all of these publications "sensationalized" the story by referring to how the Tuckers claimed that their sex life had been ruined by Tupac Shakur's rap lyrics. The most common theme of these stories printed before the *Time* article was that Mrs. Tucker said the anguish from the lyrics undermined "or cut down on" her sex life with her husband.

Of the 66 accounts of the lawsuit submitted in Time and Luscombe's Exhibits, only the August 21, 1997 edition of *The Washington Post* ignored the sex angle of other papers, although not entirely. Its report under "Names & Faces" was as follows:

> Activist C. Delores Tucker, head of the National Political Congress of Black Women, has sued the estate of slain rap artist Tupac Shakur, saying his lyrics slandered her and damaged her relationship with her husband of more than 40 years, William Tucker.
>
> Tucker and former U.S. drug policy director William Bennett campaigned to stop the distribution of violent and graphic "gangsta" rap and rock lyrics. She sued Shakur's estate for $10 million earlier this week in Philadelphia, claiming that Shakur's 1996 CD "All Eyez On Me," which contains derogatory sexual references to her, caused her "great humiliation, mental pain, and suffering" and contributed to loss of her husband's "advice, companionship and consortium."
>
> "It's hard for me to conceive how these lyrics could destroy her sex life," said Richard Fischbein, an attorney who oversees Shakur's estate.

The Washinaxon Post, Aug. 2, 1997, at C3 (attached as Exhibit 17 to Defs. Mem.).

For purposes of this opinion, it is clear that nowhere in the complaint originally filed against the Estate of Tupac Shakur on July 21, 1997, or in the amended complaint filed September 2, 1997, is there a specific reference to the "sex life" of either plaintiff. In both complaints, paragraphs 50 of original and 52 of the amended, the following allegation is made:

> Plaintiffs husband, William Tucker has as a result of his wife's injuries, suffered a loss of advice, companionship and consortium.[1]

Compl. ¶50; Am. Compl. ¶52.

In their summary judgment motion, Time and Luscombe argue that plaintiffs, in order to defeat the motion, must demonstrate that a rational jury could find that Luscombe's statements published by Time:

(1) were defamatory;

(2) were statements of potentially verifiable facts as opposed to opinion;

(3) were of and concerning both plaintiffs;

(4) were false;

(5) resulted in injury to them; and

(6) were published with actual malice.

See Defs. Mem. at 15.

I will discuss in some detail items (1) and (6). While it is not clear at this stage of the proceedings, I find, with regard to the remaining arguments presented in items (2) through (5), that there is some validity to Time and Luscombe's claims.

Time and Luscombe's claim that whether the statement was or was not defamatory is a matter to be dealt with initially by the court. In this regard, plaintiffs quote at length from Judge Giles' opinion

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1 *Consortium.* Conjugal fellowship of husband and wife, and the right of each to the company, society, cooperation, affection, and aid of the other in even conjugal relation. Loss of "consortium" consists of several elements, encompassing not only material services but such intangibles as society, guidance, companionship, and sexual relations. *Black's Law Dictionary* 309 (6th ed. 1990)(citations omitted).

in *Weinstein v. Bullick*, 827 F. Supp. 1193 (E.D. Pa. 1993). In that opinion, Judge Giles cited Pennsylvania cases supporting the following propositions:

(1) The threshold question in a defamation action is whether the publication is capable of defamatory meaning. This is for the court to decide.

(2) If the court finds a statement could be construed as defamatory, it is for the jury to determine if it was so understood by the recipient.

(3) A communication is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.

(4) In determining defamatory meaning, the court must look to the effect that it is fairly calculated to produce; the impression it would naturally engender in the minds of average persons among whom it is intended to circulate.

(5) The statement must be reviewed in the entire context.

See id. at 1196-97.

Time and Luscombe generally agree with those statements of Pennsylvania law but add that "[A] defamatory communication 'necessarily involves the idea of disgrace' and tends to cause others to 'ostracize and shun' the subject." *See* Defs. Mem. at 31 (quoting *Beckman v. Dunn*, 419 A.2d 583, 586-87 (Pa. Super. 1980)). *See also* W. Page Keeton et al., *Prosser and Keeton on Law of Torts* § 111, at 739 (4th ed. 1971)(stating that a defamatory communication "involves the idea of disgrace" and "reflects upon [the subject's] character").

The statement by Time and Luscombe could certainly be annoying and also embarrassing to the plaintiffs. But such effect cannot form the basis for a defamation action. There is a vast

difference between being annoyed and/or embarrassed on the one hand, and being disgraced and ridiculed to the extent that one's reputation is harmed and lowered in the estimation of the community, on the other. I cannot see the latter happening from Luscombe's statement published by Time in this case. Thus, I find it is not defamatory as a matter of law.

Quite apart from the issue of whether the statements are defamatory is the matter of actual malice as applicable to this case. Plaintiffs, in their effort to show that this issue deserves a jury determination, has listed 24 matters which they say circumstantially show malice. The majority of these 24 matters (15 by my count) deal with the alleged inadequate investigation by Luscombe before writing the story. I have paraphrased them as follows:

(3) Time/Luscombe's failure to obtain Tucker I complaint before reporting on its contents.

(4) Time/Luscombe's preconceived story line.

(5) Time/Luscombe's reliance upon Fischbein.

(6) Time/Luscombe's adopting Fischbein's sexual spin without quoting him.

(7) Time/Luscombe's ignoring the plaintiffs 7/31/97 news release and news articles saying media was distorting Tuckers' claim.

(10) Time/Luscombe's failure to contact plaintiffs' lawyer.

(11) Time/Luscombe's failure to ask the critical question as to whether Mrs. Tucker claimed that lewd lyrics destroyed her sex life.

(12) Time/Luscombe's selecting articles and story lines that supported their story.

(15) Time/Luscombe's not attempting to get the other side of the story.

(16) Time/Luscombe's failure to include mandated document in the Time Library.

(17) Time/Luscombe's failure to conduct a proper investigation of a story that was not "hot news."

(18) Plagiarizing other stories.

(19) Time/Luscombe's writing a story on an unfamiliar subject without consultation.

(20) Time/Luscombe's failure to be aware of the amended complaint averring falsity of media spin.

(24) Luscombe's swearing under oath that she did not even see *JET* article when it is in her Time Library source file and highlighted.

See Pls. Mem. at 13. Two of the remaining nine items deal with Time/Luscombe's failure to conform to its own guidelines and the Professional Journalists Code of Ethics. Three more items allege the publishing of the false statement because of its sensational value and failure to retract it. And the two remaining types of conduct listed by Plaintiffs are Time's post-suit actions intending to preclude discovery, and Luscombe's swearing under oath that she principally relied on *Rolling Stone* and *Newsweek* magazines in her story when she expressed doubt in her deposition.

The problem, as I see it, with plaintiffs' argument is that it lacks support in case law. As stated earlier, the plaintiffs admit that they are public figures and that therefore they have the burden of proving that Time published Luscombe's article with actual malice.

In *Masson v. New Yorker Magazine*, 501 U.S. 496, 511, 111 S. Ct. 2419, 2429 (1991), the Court expressed the manner in which the First Amendment limits libel laws by summarizing existing law as follows:

> The First Amendment limits California's libel law in various respects. When, as here, the plaintiff is a public figure, he cannot recover unless he proves by clear and convincing evidence that the defendant published the defamatory state-

> ment with actual malice, *i.e.*, with "knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280, 84 S. Ct. 710, 726, 11 L.Ed.2d 686 (1964). Mere negligence does not suffice. Rather, the plaintiff must demonstrate that the author "in fact entertained serious doubts as to the truth of his publication," *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S. Ct. 1323, 1325, 20 L.Ed.2d 262 (1968), or acted with a "high degree of awareness of ... probable falsity," *Garrison v. Louisiana*, 379 U.S. 64, 74, 85 S. Ct. 209, 215, 13 L.Ed.2d 125 (1964).

The *Masson* court went on to explain that the "actual malice under The New York Times standard should not be confused with the concept of malice as an evil intent or a motive arising from spite or ill will." *Id.* Referring to the term "actual malice" as one that can "confuse as well as enlighten" and opining that "the phrase may be an unfortunate one," the Court concluded that, "[I]n place of the term actual malice, it is better practice that jury instructions refer to publication of a statement with knowledge of falsity or reckless disregard as to truth or falsity." *Id.* at 511, 111 S. Ct. at 2430.

With the above summation of the legal setting into which this case falls, the question is: Can plaintiffs demonstrate sufficient material facts in dispute, which if viewed in favor of plaintiffs, could support a rational jury's finding by clear and convincing evidence that Time and Luscombe published the alleged libelous statement with malice? They cannot, in my judgment, because the record, viewed in favor of plaintiffs, the non-moving party, suggests, at best, that Time and Luscombe were negligent in failing to investigate the factual basis of its published statements about plaintiffs.

The allegation that Time's law department improperly equated consortium with sex provides no evidence of malice for several reasons, not the least of which is that equating consortium with sex

is not the least bit unusual. Moreover, the suggestion that not permitting in-house counsel to testify, a decision which I upheld, somehow equates to malice is not logical. The same is true when plaintiffs state that the noncompliance with professional in-house standards of conduct somehow fairly imply malice. At most, this also implies carelessness not rising to the level of reckless disregard for the truth.

The *uncontested record*, as earlier eluded to, reveals that Luscombe relied on previously published reports in reputable publications. Several cases suggest that this type of good faith reliance precludes a finding of malice as a matter of law. *See McFarlane v. Sheridan Square Press, Inc.*, 91 F.3d 1501, 1510 (D.C. Cir. 1996). In short, there is no clear and convincing evidence that Time and Luscombe "in fact entertained serious doubts as to the truth" of the article or that Time and Luscombe had a "subjective awareness of probable falsity." This high standard of proof, as established in *McDowell v. Paiewonsky*, is simply not met on the summary judgment record before this court. *See* 769 F.2d 942, 951 (3d Cir. 1985).

II. COMPLAINT AGAINST NEWSWEEK, INC. AND JOHNNIE L. ROBERTS

The sum and substance of plaintiffs' complaint against Newsweek and Roberts is that the following article was defamatory:

EXHIBIT
William Tucker
[illegible]

LEGAL AFFAIRS

Grabbing at a Dead Star

Lawsuits plague rapper Tupac Shakur's estate

By Johnnie L. Roberts

RAP STAR TUPAC SHAKUR'S ASHES had hardly cooled before the gold rush began. Now, almost a year after his death, his mother is defending the estate from an old lover who turned up to prove he's Tupac's father. An Arkansas court has already awarded $16.6 million to a woman who was shot at a Tupac concert. Until a tentative settlement last week, Tupac's label, Death Row Records, was demanding a $7 million slice, and its imprisoned CEO wanted millions more. Even C. Delores Tucker, the gangsta rap foe, wants a chunk. She and her husband claim that a lyrical attack by Tupac lured their son Ja'. "It's like being on a ship and watching pirates trying to loot it," says attorney Richard Fischbein, who administers the estate with Tupac's mother, Afeni Shakur.

As Thomas Mann wrote, "A man's dying is more the survivors' affair than his own." Since Tupac was murdered last September, his multimillion-dollar legacy has become the contentious affair of his colleagues and alleged opportunists from L.A. to Australia. In his lifetime, Tupac's profane rap lyrics and violent encounters made him controversial, helping to swell by tens of millions of dollars the coffers of Death Row and its corporate benefactors, Interscope Records, Time Warner and Seagram's Universal [illegible] MCA.

Yet Tupac was almost broke when he died. Alleging massive fraud and conspiracy, Fischbein and Afeni Shakur sued Death Row, its jailed CEO, "Suge" Knight, and its lawyer, David Kenner. They owed Tupac at least $8.9 million, the suit alleged, and $7.1 million more in expenses charged to his account that he hadn't incurred, including $250,000 for a house Kenner rented. As of last Friday, the estate was close to settling on its terms, according to Fischbein. Even before that, he adds, there was $7 million on hand from royalties and movies. A settlement could ultimately push the estate's value to $50 million, estimates one person close to the matter.

The fortune increases the stakes in the ugly probate battle in Los Angeles between Tupac's parents. Tupac had no will, there seems little doubt that he would wanted his mother to inherit. The [illegible] his biological father had always be[illegible] doubt. Although Afeni had once been [illegible] fessed drug addict, her son loved and [illegible] parted her, writing a song about her "Dear Mama." But California law req[illegible] the estate to be split by the persons if [illegible] no will. Enter William M. Garland, wh[illegible] established paternity through DNA te[illegible] "Afeni had contended that Tupac's f[illegible] was dead," says Garland's attorney, M[illegible] ell Reinis. Says Fischbein: "We still [illegible] ence of the deadbeat dad. He wasn't b[illegible] warded for his lack of interest in his son

The most serious blow to the estat[illegible] suited from a 1993 tragedy in Pine [illegible] Ark., in which Jacquelyn McCloskey, [illegible] was struck by a stray bullet at a Tupac [illegible] ert. Last November a judge granted [illegible] ages of $16.6 million when Tupac's re[illegible] executives failed to show at a hea[illegible] Fischbein says Tupac was never prop[illegible] notified of the lawsuit and that he hir[illegible] knew nothing of it until he was phone[illegible] MTV after the judgment. The estate is [illegible] pending. "The police report[illegible] tually said Tupac had nothin[illegible] do with it," Fischbein says.

Fischbein fairly snarls at [illegible] the suit by Tucker, a perenn[illegible] crusader against gangsta [illegible] On an album last year, Tu[illegible] addressed Tucker as a "mad [illegible] f--ker," and he suggested [illegible] she was a prostitute—at l[illegible] that's what she alleges in a [illegible] suit against the estate, D[illegible] Row and others. Among ot[illegible] things, the owners that [illegible] feared for her life, had been [illegible] millioned and can no longer h[illegible] sex with her husband. S[illegible] Fischbein: "I won't wait to h[illegible] her testimony on that subje[illegible] Her attorney, Richard Arn[illegible] says the lyrics "affected the f[illegible] fly union." On that note, Tu[illegible] will rest in peace.

Broke when he died: But the estate could grow to $50 million

The critic: [illegible] offered Tupac's [illegible]

Death Row boss: Demanding a slice

Prodigal dad: DNA proves paternity

BEST AVAILABLE COPY

Johnnie L. Roberts, *Legal Affairs Grabbing at a Dead Star*, *Newsweek*, Sept. 1, 1997, at 48.

Among other defenses, Newsweek and Roberts, like Time and Luscombe, contend that the article is not defamatory and that the plaintiffs cannot prove actual malice. For substantially the same reasons as set forth in the Time/Luscombe discussion, I do not find the language "iced her sex life," and the statement later in the article that Mrs. Tucker "can no longer have sex with her husband" are defamatory, in the entire context of the article. That such language can be annoying and embarrassing is certainly possible, but it is not sufficient for a defamation action.

As to actual malice, or the lack thereof, it is difficult to determine from plaintiffs' brief exactly what they are relying upon to show actual malice with regard to the Newsweek/Roberts account. The primary factor stems from a conversation between plaintiffs' attorney and Johnnie Roberts. Viewing this factor most favorably for plaintiffs would result in a finding that plaintiffs' attorney told Roberts before he wrote the story that "consortium can mean, in some cases, sex. I said most of the time it doesn't and it doesn't in this case." Angino Dep. at 165, lines 15-17 (attached as Exhibit 6 to Pls. Mem.). Newsweek and Roberts admit in their reply brief that a finding that Roberts was lying could support a finding of actual malice. But the record on summary judgment falls far short of clear and convincing evidence that Roberts was lying in his deposition. Plaintiffs' counsel concedes this when he says in his deposition, "I don't think when he [Johnnie Roberts] testified in his deposition that he was lying." *Id.* at 163, lines 11, 12.

What plaintiffs seem to be arguing is that plaintiffs' counsel told Roberts that this lawsuit was not about sex but that Roberts went ahead and wrote his story while flat out denying that version of his

conversation with Plaintiffs' counsel. Unfortunately for plaintiffs, as virtually conceded by plaintiffs' counsel, this is not the way it happened.

The following exchange took place at the deposition of Roberts by plaintiffs' attorney:

> Q. Did I say that she couldn't have any sex with her husband?
>
> J.R. No.
>
> Q. Is that she could no longer have sex?
>
> J.R. No, you didn't use those precise words, no.
>
> Q. Where did you get the words, "Can no longer have sex with her husband?"
>
> J.R. That's one of the definitions of consortium, that it affects sexual relationships.

Roberts Dep. at 219, lines 2-17 (attached as Exhibit 13 to Pls. Mem.).

This exchange seems to suggest that Roberts knew what plaintiffs' attorney's position was with regard to the loss of consortium claim, but that he chose to ignore it in light of his understanding of consortium. Simply not accepting plaintiffs' counsel's version of loss of consortium, especially in light of his other investigatory efforts, *See* Defs. Mem. (Roberts Decl. thereto), is insufficient to support a claim of actual malice. By that I am saying that the evidence does not, as a matter of law, support plaintiffs' theory that Newsweek published the Tucker story knowing that it was false or with a reckless disregard as to its truth or falsity. Moreover, plaintiffs' attorney even told Roberts that consortium can in some cases mean sex, even though in this case, it does not.

III. COMPLAINT AGAINST FISCHBEIN

Fischbein in his motion for summary judgment argues that his comments are incapable of being defamatory. I agree. Fischbein was quoted in the *Philadelphia Daily News* as saying "[I]t's hard for me to conceive how these lyrics could destroy her sex life ... [b]ut we can only wait for the proof to be revealed in court." Jamal E. Watson and Jim Smith, *A Dirty Rap, Philadelphia Daily News*, Aug. 2, 1997, at 5 (attached as Exhibit E to Def. Mem.). Fischbein was also quoted in *Newsweek* as saying, "I can't hardly wait to hear testimony on that subject." Johnnie L. Roberts, *Legal Affairs—Grabbing at a Dead Star, Newsweek*, Sept. 1, 1997, at 48.

In viewing plaintiffs' lengthy but largely irrelevant brief in reply to Fischbein's motion, it seems that the chief gripe of plaintiffs' counsel is that Fischbein has made a mockery out of the discovery process. Out of a 45 page brief, pages 7 to 45 are nothing more than extracted portions of Fischbein's deposition testimony.

Plaintiffs' brief refers only to Fischbein's "defamatory sexual spin." Assuming that Fischbein made the exact remarks as attributed to him, I am convinced they are not defamatory as I have defined that term in this opinion.

Counsel for all defendants have made various other arguments, not the least of which is that the statements were true. By not commenting on them, I have not necessarily rejected them.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

NO. 97-6150

C. DELORES TUCKER and WILLIAM TUCKER, her husband,

Plaintiffs,

v.

RICHARD FISCHBEIN, TIME INC., BELINDA LUSCOMBE, NEWSWEEK MAGAZINE and JOHNNIE L. ROBERTS,

Defendants.

ORDER

AND NOW, this 9 day of February, 1999, it is hereby ORDERED that summary judgment is GRANTED in favor of Time Inc., Belinda Luscombe, Newsweek Magazine, Johnnie L. Roberts and Richard Fischbein and against C. Delores Tucker and William Tucker, in accordance with the accompanying memorandum.

BY THE COURT:

/s/RONALD L BUCKWALTER, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION

NO. 976150

C. DELORES TUCKER and WILLIAM TUCKER, her husband,

Plaintiffs,

v.

RICHARD FISCHBEIN, TIME INC., BELINDA LUSCOMBE, NEWSWEEK MAGAZINE and JOHNNIE L. ROBERTS,

Defendants.

ORDER

AND NOW, this 10th day of February, 1999, in light of this court's decision granting summary judgment in favor of all defendants, it is hereby ORDERED that Defendants' Motion to Disqualify (Docket No. 66), and Defendants' Motion to Exclude Plaintiffs' Expert Testimony (Docket No. 76) are DENIED as MOOT.

BY THE COURT:

/s/RONALD L. BUCKWALTER, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 97CV-4717

FILE JUL 21 1997

C. DELORES TUCKER and
WILLIAM TUCKER, her husband,

Plaintiffs

v

MTS, INC. t/a TOWER RECORDS; INTERSCOPE, INC.; INTERSCOPE RECORDS; TED FIELD; TIME WARNER; JAMES IOVINE; SEAGRAM CO.; MCA INC.; MERRILL LYNCH; DEATH ROW RECORDS, INC.; DAVID KENNER; and AFENI SHAKUR as administratrix of the ESTATE OF TUPAC SHAKUR,

Defendants

JUDGE _____

JURY TRIAL DEMANDED

COMPLAINT

1. Plaintiff C. Delores Tucker is the chair of the nonprofit National Congress of Black Women, Inc. She is the former Secretary of State of the Commonwealth of Pennsylvania and Chair of the Democratic National Committee Black Caucus and the National Board of N.A.A.C.P.

2. Plaintiff C. Delores Tucker resides in the Commonwealth of Pennsylvania.

3. Plaintiff William Tucker is married to C. Delores Tucker and resides in the Commonwealth of Pennsylvania.

4. Defendant MTS, Inc., under the trade name of Tower Records, is a California Corporation with its principal place of business in California.

5. Defendant Interscope, Inc. is a California Corporation with its principal place of business in California.

6. Defendant Interscope Records is a California General Partnership with its principal place of business in California.

7. Defendant Ted Field is an owner or partner and/or has a financial interest in Interscope Records and resides in a state other than Pennsylvania.

8. Defendant Time Warner has or had a financial interest in Interscope Records, and its principal place of business is in a state other than the Commonwealth of Pennsylvania.

9. Defendant James Iovine is the President of Interscope Records and resides in a state other than Pennsylvania.

10. Defendant Seagram Co. is a company with a financial interest in Interscope and has its principal places of business outside of the Commonwealth of Pennsylvania.

11. Defendant MCA Inc. and/or Universal are corporations with a financial interest in Interscope and principal places of business in a state other than the Commonwealth of Pennsylvania.

12. Defendant Merrill Lynch is a business entity with a financial interest in Interscope and its principal place of business in a state other than the Commonwealth of Pennsylvania.

13. Defendant Death Row Records, Inc., is a California Corporation with its principal place of business in California.

14. David Kenner is an attorney representing Death Row Records, Inc., may have a proprietary and/or other financial interest in Death Row Records, and resides outside the Commonwealth of Pennsylvania.

15. Defendant Afeni Shakur who resides in a state other than Pennsylvania is the Administratrix of the Estate of deceased Defendant Tupac Shakur.

16. At all times relevant to this Complaint, up until his death on September 13, 1997, deceased Defendant Tupac Shakur was a servant, agent, apparent agent and/or employee of Defendant Death Row Records and was acting within the course and scope of employment for Death Row Records.

17. At all times relevant to this Complaint, James Iovine was a servant, agent, and/or employee of Interscope Records and was acting within the course and scope of employment for Interscope Records.

18. At all times relevant to this Complaint, David Kenner was a servant, agent, and/or employee of Death Row Records, Inc. and was acting within the course and scope of employment for Death Row Records.

19. At all times, relevant to this Complaint, Defendant Interscope Records had an exclusive distribution agreement with Defendant Death Row Records through which Interscope Records distributed under its label, recordings produced by Defendant Death Row Records.

20. At all times relevant to this Complaint, Defendant Interscope Inc., was the managing general partner of Defendant Interscope Records.

21. At all or various times relevant to this Complaint, Interscope Records was 50% owned by Seagram Co.'s MCA Inc.

22. At all or various times relevant to this Complaint, Interscope Records was owned in part by Time Warner or Time Warner had a financial interest in Interscope.

23. Prior to February, 1996, Plaintiff C. Delores Tucker was the leader of a large group of religious, moral, and law abiding citizens who marched, lobbied, and campaigned against the pornographic and drug oriented misogynistic lyrics of "gangsta" rap as created, promoted, distributed, and marketed by various defendants to minors without restriction.

24. "Gangsta rəp" is a sla..g expression using vernacular for the word "gangster" which, by definition refers to one engaged in anti-social or criminal behavior. Furthermore, the music contains vile, profane, obscene and indecent lyrics which glorify drugs, violence, and illicit sex. "Rap" or "Hip Hop" is a form of music, more spoken than sung, and can be distinguished from "gangsta rap" in

that it chronicles life in the ghetto without obscene and indecent lyrics, and may have redeeming social value.

25. Various defendants involved with Death Row Records and "gangsta" rappers take pride in the sex, drugs and "gangsta" violent behavior and its influence on increased record sales.

26. Plaintiff has focused her attention on stopping the production and distribution of said music to impressionable youth, because it tends to corrupt the morals of minors, in violation of 18 Pa.C.S.A. §6301(a), that some of it is obscene and unprotected by the Constitution, and some is "explicitly sexual material" in violation of 18 Pa.C.S.A. §5903(c). See Exhibits "A" and "B" attached hereto.

27. Said efforts met with widespread support across political, racial and economic lines, including support from William Bennett, former U.S. Secretary of Education, U.S. Senator Joseph Lieberman, Majority Leader and Vice Presidential candidate Robert Dole, and General Colin Powell.

28. In February, 1996, Defendant Interscope Records, distributed under its label, "All Eyez On Me", which is a record containing music performed by deceased Defendant recording gangsta rap superstar Tupac Shakur and produced by Defendant Death Row Records.

29. Contained on the aforementioned recording entitled "All Eyez on Me" are recordings entitled "Wonda Why they Call B" and "How Do You Want It."

30. Contained in the aforementioned recording entitled "How Do You Want It" were lyrics stating "C. Delores Tucker you're a mother fucker, instead of trying to help a brother you destroy a nigga."

31. Contained in the aforementioned recording entitled "Wonda Why they Call B" were lyrics stating "Got your legs up trying to get rich. Keep your head up and your legs closed Dear Ms. Delores Tucker" alluding to prostitution and tells why women are called bitches.

32. In January, 1996, Plaintiff C. Delores Tucker engaged in a lawful protest against the sale of gangsta rap music to minors by Defendant MTS, Inc., under the trade name of Tower Records, in Philadelphia, Pennsylvania.

33. On March 2, 1996, Plaintiff again, in the exercise of her constitutional right to protest, engaged in a protest on the premises of Defendant, MTS, Inc., under the trade name of Tower Records, in Philadelphia, Pennsylvania to stop the sale to minors of sound recordings containing sexually explicit lyrics as expressly prohibited by 18 Pa. C.S.A. §5903 and 18 Pa. C.S.A. §6301(a). See Exhibits "A" and "B".

34. As a result of her lawful protest, Plaintiff was arrested, handcuffed, and forcibly removed by police from the premises of Defendant MTS, Inc., under the trade name of Tower Records

35. The aforementioned removal of Plaintiff C. Delores Tucker from the premises of Defendant MTS, Inc., under the trade name of Tower Records, took place under the express direction or with the knowledge and consent of Defendant MTS, Inc., under the trade name Tower Records.

36. Sometime after February 1, 1996, Defendant MTS, Inc., under the trade name of Tower Records, nevertheless offered for sale and sold to minors the aforementioned sound recording entitled "All Eyez On Me", and other gangsta rap albums containing sexually explicit messages, offensively coarse language and lewd and indecent words about Plaintiff C. Delores Tucker.

37. Defendants all participated in various ways, in the conceiving of the idea, creating the recording, the marketing/distributing and not recalling "All Eyez On Me" which contained sexually explicit messages, offensively coarse language, and lewd and indecent words about Plaintiff C. Delores Tucker in violation of 18 Pa. C.S.A. §5504.

38. In August, 1995, Defendant Interscope filed suit against Plaintiff C. Delores Tucker in California charging her, *inter alia*, with Inducement to Breach the Contract between Death Row and Interscope.

39. Defendants knew full well that Plaintiff had done no such thing and filed the false claim only to embarrass her, to cause emotion distress and to deter her crusade against gangsta rap.

40. In May, 1997, the U.S. District Court for the Central District of California (Case No. CV 95-5444), Judge M. Takasugi issued an opinion that there was no breach of contract and that Plaintiff did not induce a breach of the contract as alleged by Interscope, which of course they already knew.

41. Following the lawsuits and the release of the aforementioned recordings, Plaintiff, C. Delores Tucker has reasonable fear for her life because violence and death play a central role in the gangsta rap arena. Indeed, two prominent murders have been reported since the unsolved murder of Tupac Shakur in September, 1996.

42. Since the lawsuits and the release of the aforementioned recordings Plaintiff, C. Delores Tucker has received death threats.

43. The lawsuits and the release of the aforementioned recordings were intended to and did cause Plaintiff C. Delores Tucker severe emotional distress.

44. By using vile and offensive language, the recordings have held her up as an object of scorn to more than 5,000,000 people, including children in Philadelphia and elsewhere.

45. Since the lawsuits and the release of the aforementioned recordings C. Plaintiff C. Delores Tucker has suffered defamation of character and reputation.

46. Plaintiff, who is frequently called upon to speak at churches throughout the country, is a moral and religious daughter of a well-known, respected Philadelphia minister, now deceased, and has

siblings, extensive family, relatives, and thousands of friends in Philadelphia and throughout the country and world, who have heard or heard about the said recording and lawsuit.

47. As a result, Plaintiff C. Delores Tucker, has incurred medical expense; has undergone mental pain, suffering, and inconvenience; loss of life's pleasures; fears for her life; has lost her personal freedom to travel freely where and when she desires; and claim is made therefor.

48. As a result of the aforesaid injuries, Plaintiff C. Delores Tucker will incur medical expense; will undergo mental pain, suffering, and great inconvenience; loss of life's pleasures; fear for her life; lose her personal freedom to travel freely where and when she desires; and claim is made therefor.

49. As a result, Plaintiff C. Delores Tucker has been, and in the future will be, subject to great humiliation and embarrassment, and claim is made therefor.

50. Plaintiff's husband, William Tucker has as a result of his wife's injuries, suffered a loss of advice, companionship and consortium.

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand judgement against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT I—INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

C. Delores Tucker and William Tucker v. MTS, Inc., t/a Tower Records, Interscope Inc., Interscope Records, Ted Field, James Iovine, Seagram Co., MCA Inc., Merrill Lynch, Death Row Records, Inc., Estate of Tupac Shakur, Afeni Shakur as Administratrix of the Estate of Tupac Shakur Time Warner, and David Kenner.

51. Paragraphs 1 through 50 of this Complaint are incorporated herein by reference.

52. Deceased Defendant Tupac Shakur's conduct as set forth above was extreme and outrageous.

53. As a direct and proximate result of Defendant Tupac Shakur's extreme and outrageous conduct as set forth above, Plaintiff C. Delores Tucker suffered severe emotional distress including but not limited to, feelings of fright, shock, humiliation, and outrage.

54. Defendants all participated in various ways, including the bringing of lawsuits, submitting Plaintiff Tucker to eleven days of depositions, the conceiving of the idea, creating the recording, the marketing/distributing and not recalling "All Eyez On Me" for the specific purpose of causing Plaintiff C. Delores Tucker to suffer extreme distress, fear for her life, and to lessen her resolve against "gangsta" rap.

55. Defendants' actions as set forth above constituted extreme and outrageous conduct that evidence a wanton disregard for the

safety and well-being of Mrs. Tucker sufficient to merit an award of punitive damages, and claim is made therefor.

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand judgment against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT II—SLANDER

C. Delores Tucker and William Tucker v. MTS, Inc., t/a Tower Records, Interscope Inc., Interscope Records, Ted Field, James Iovine, Seagram Co., MCA Inc., Merrill Lynch, Death Row Records, Inc., Afeni Shakur as Administratrix of the Estate of Defendant Decedent Tupac Shakur

56. Paragraphs 1 through 55 of this Complaint are incorporated herein by reference.

57. Deceased Defendant Tupac Shakur's aforementioned lyrics referring to Plaintiff C. Delores Tucker in "All Eyez On Me" were false and defamatory when produced, marketed, distributed and sold.

58. Deceased Defendant Tupac Shakur's aforementioned defamatory lyrics were produced with malice, meaning that said lyrics were produced with knowledge that they were false.

59. Defendants other than Deceased Defendant Tupac Shakur knowingly participated in the creation, marketing, distribution, and sale of the slanderous recording "All Eyez On Me" and refused to recall same even though there was precedent involving anti-semitic lyrics by Michael Jackson.

60. As a result of the malicious lyrics, Plaintiff C. Delores Tucker's reputation has been subject to ridicule, insult, and her reputation damaged.

61. Defendants' actions as set forth above constituted extreme and outrageous conduct that evidence a wanton disregard for the safety and well-being of Mrs. Tucker sufficient to merit an award of punitive damages, and claim is made therefor.

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand punitive judgement against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

COUNT III—INVASION OF PRIVACY

C. Delores Tucker and William Tucker v. MTS, Inc., t/a Tower Records, Interscope Inc., Interscope Records, Ted Field, James Iovine, Seagram Co., MCA Inc., Merrill Lynch, Death Row Records, Inc., Afeni Shakur as Administratrix of the Estate of Defendant Decedent Tupac Shakur

62. Paragraphs 1 through 61 of this Complaint are incorporated herein by reference.

63. Deceased Defendant Tupac Shakur's lyrics contained in the aforementioned recording "All Eyez On Me" were intentionally created, recorded, marketed/distributed, sold, and not recalled for the purpose of intruding upon the private affairs and concerns of Plaintiff C. Delores Tucker.

64. Defendants all appropriated to their own use and benefit, the name of C. Delores Tucker by creating, recording, marketing/distributing, selling and not recalling the aforementioned recording "All Eyez On Me.".

65. Defendants all participated in various ways in placing Plaintiff C. Delores Tucker before the public in a false light of a kind highly offensive to the reasonable man by creating, recording, marketing/distributing, selling and not recalling the aforementioned recording "All Eyez On Me."

66. Defendants all participated in various ways in unreasonably and seriously interfering with Plaintiff C. Delores Tucker's interest in not having her name or likeness exhibited to the public by creating, recording, marketing/distributing, selling and not recalling the aforementioned recording "All Eyez On Me."

WHEREFORE, Plaintiffs C. Delores Tucker and William Tucker demand punitive judgement against Defendants in an amount in excess of $10,000,000, exclusive of interest and costs, and in excess of any jurisdictional amount requiring compulsory arbitration.

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Dated: 7/18/97

EXHIBIT "A"

Dow Jones Index Avg. Up 47.39 7,333.55

Business

THE RAP AGAINST TIME

Levin gets earful at yearly meeting

By JON ELSEN

Time Warner CEO Gerald Levin thought his gangsta-rap headache was over when he got rid of Interscope Records last year.

Not quite.

Anti-gangsta rap crusader C. DeLores Tucker took the floor at Time Warner's annual meeting at the famed Apollo Theater in Harlem yesterday and blasted Levin for what she called Time Warner's vulgar message on gangsta rap.

"Shame on our family, Time Warner, for promoting this filth, which is corrupting our youth," said Tucker, chairwoman of the National Political Congress of Black Women. "You're murdering the destruction of our children."

Tucker pointed to two musicians on Time Warner's Atlantic label and tweaked the old-hatched, public crowd to a extensive reading of some gangsta lyrics by the rapper Lil' Kim.

When she finished, and talked to the press in the Apollo's "Tree of Hope" — traditionally knocked by performers before they go on stage — she was met with considerable applause by Time Warner stockholders.

Lil' Kim and the other rap artist Tucker mentioned, Junior M.A.F.I.A., are two of Atlantic's best-selling rap acts. They have sold more than 10,000 records, generating a estimated $15 million in revenue for Time Warner's Warner Group, which distributes them.

Atlantic Records may actually part ways soon with the producer of records by Lil' Kim and Junior M.A.F.I.A.

Unless Entertainment, which produces their records, can come to a dispute with Atlantic and is dropping its services to other labels. But while Undone may take Lil' Kim and Junior M.A.F.I.A. elsewhere, Time Warner has negotiated for itself the right to release 50 more of their recordings, even if Undone leaves.

Shareholders' response to Tucker's comments at the meeting gave an indication of what Levin may go against last year when he dumped Interscope at the urging of Tucker and William Bennett.

But Levin is no outsider problems in his music division as well. It's the one Time Warner unit not performing strongly these days.

And after he got rid of Interscope, Bronfman's MCA took picked up half of the company and went on to grant more than $200 million with it last year. Interscope released records by Death Row artists Tupac Shakur and Tha Dogg Pound.

Levin's response yesterday was his only hasty comment in an otherwise smooth annual meeting, at which he noted his company's earning reach price and promised that the company will continue that strong performance for the rest of the year.

He told Tucker that Time Warner is talking with record executives about the impact of their music, and noted that the objectionable records are only a few of the 2,500 released by Time Warner each year. He also assured all black executives who are "all part of the Time Warner family."

After the session, Levin said that Time Warner President Richard Parsons went to Washington, D.C., last week to talk to Tucker, but she wouldn't see him.

Asked if the company plans to continue producing records by Lil' Kim, Levin said to ask those at Time Warner's Atlantic records unit. addition, "I don't want to deal with the question anymore." But officials at Atlantic could not be reached.

Some have questioned Tucker's credibility as a critic because of accounts that she profited from controversial properties in Philadelphia. And she has been involved in a lawsuit filed by interscope exec claiming she's an economic motive for criticizing rap music.

Hilary Rosen, president of the Recording Industry Association of America, said Lil' Kim "wouldn't be on anyone's list of gangsta rap."

Her records are labeled having explicit lyrics. "It's the point where you can't say you don't like it, don't buy it, and you probably should tell your friends not buy it either," she said.

MEDIA CITY

EXHIBIT "B"

VIOLENCE, DRUGS, & SEXUALLY MISOGYNIST LYRICS DISTRIBUTED BY

Tupac Shakur Interscope	*Strictly 4 My Nigga:* 500,000 copies sold.	"Strugglin'--"I'd rather use my gun' cause I get my money quicker...got 'em in the frame__Bang! Bang!...blowing' muthfuckers to the moon.
Snoop Doggy Dogg Death Row/Interscope	*Doggystyle* More than 3 million sold (802,000) in one week. #1 pop album.	"Pump Pump" depicts Snoop arguing with another guy over a girl. After Snoop states. "We can handle this like some gentleman or we can get into some gangsta shit." The other individual replies "What's up nigger? What's up." Next one hears gun shots and laughter and Snoop respoods, "That's what's up." [Obviously insinuating that problems are best resolved through the use of a weapon and murder, rather than communication.]
Snoop Doggy Dogg Death Row/Interscope	*Doggystyle* Over 3 million albums sold.	"G Funk Intro"--"We travel in packs and we do it from the back, how else can you get to the booty? We do it doggy style--all the while we do it doggy style. He fucked the fleas off the bitch; she shakes the ticks off his dick, and in her booty he buries his muthafuckin'bone."
Snoop Doggy Dogg Death Row/Interscope	*Doggystyle* #1 pop album sold more than 3million copies (802,000 in a week).	"Tha' Lunatic" --"Oh shit, jumped on man's dick. Hears he had a 12-inch. Now the bitch is lovesick. Who's the blame? The guy or the groupie...now she want to do me. Hoo--wee, this is the life--new bitch every night."
Tupac Shakur Interscope	*2 Pacalypse Now* #13 R&B album	"Tha Shiznit"--"It's a 1.8.7 [California penal code for murder] on a muthafuckin' cop...so what the fuck does the nigger say? Gotta take a trip to the A...A and serve your ass with a muthafuckin' AK[47]."

MC00128

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

INTERSCOPE RECORDS, INC., a California corporation, as managing general partner of INTERSCOPE RECORDS, a California general partnership, Plaintiff, vs. C. DELORES TUCKER, an individual; and ATLANTIC VENTURES, INC., a Delaware corporation, Defendants.	CASE NO. 95-5444 RMT (CTx) COMPLAINT FOR INDUCEMENT TO BREACH CONTRACT, INTENTIONAL INTERFERENCE WITH CONTRACT AND PROSPECTIVE BUSINESS ADVANTAGE; UNFAIR BUSINESS PRACTICES AND UNFAIR COMPETITION; INJUNCTIVE RELIEF AND DAMAGES (JURY TRIAL DEMANDED)

Plaintiff brings this action against defendants for the claims specified below and seeks injunctive relief and damages as follows:

PARTIES

1. The plaintiff is Interscope Records, Inc., a California corporation, as the managing general partner of INTERSCOPE RECORDS, a California general partnership ("Interscope"). Interscope has its principal place of business in the Central District of California, Western Division. Interscope is a joint venture partnership between Interscope Records, Inc. and Atlantic Ventures, Inc., a nominal defendant herein.

2. Interscope is informed and believes, and based thereon alleges, that the defendant, C. Delores Tucker ("Tucker"), an individual, resides in and is a citizen of a state other than California.

3. Interscope names as a nominal defendant, against which it seeks no relief in this action, Atlantic Ventures, Inc. ("Atlantic"), a Delaware corporation, headquartered in the state of New York.

JURISDICTION AND VENUE

4. Jurisdiction exists in this action under the principle of diversity of citizenship, 28 U.S.C. §1332, in that the matter in controversy exceeds $50,000, exclusive of interest and costs; and the Plaintiff and all of the defendants are citizens of different states.

5. Venue is properly laid in this District pursuant to 28 U.S.C. § 1302. Interscope is informed and believes, and based thereon alleges, that at all relevant times Tucker engaged in certain wrongful acts alleged below in the Central District of California, Western Division, and engaged in other unlawful, acts outside this District which caused injury to Interscope in this District. Accordingly, venue properly lies in this District.

GENERAL ALLEGATIONS

6. Interscope is a California general partnership consisting of Interscope Records, Inc. and Atlantic Ventures, Inc. ("Atlantic"), an affiliate of Time Warner Inc. ("Time Warner"). Interscope is one of the most successful record labels in the world.

7. Interscope has entered into valuable exclusive contractual arrangements with other record companies which furnish to Interscope recordings by artists for exclusive distribution through the

Interscope label. Among such companies is Death Row Records, Inc. ("Death Row Records"), with whom Interscope has an exclusive distribution agreement (the "Death Row Records Contract").

8. Interscope's exclusive contractual relationship with Death Row Records, and Time Warner's involvement in the Interscope partnership, have been widely publicized, and upon information and belief, are known by Tucker.

9. Beginning in mid-1995 and continuing to the present, Tucker, together with others whose identities are currently unknown to Interscope, embarked upon and has continued to engage in a scheme and conspiracy to destroy Interscope by committing extortion, threats and other unlawful acts. Among other things, Tucker has (a) attempted to induce Death Row Records to breach the Death Row Records Contract; (b) interfered with Interscope's valuable relationship with Death Row Records; (c) damaged Interscope's reputation and credibility in the music industry; and (d) attempted to induce Atlantic and Time Warner to breach their fiduciary obligations to Interscope. Interscope is informed and believes, and on that basis alleges, that Tucker has pursued such unlawful acts in order to create a record distribution company to distribute recordings produced by Death Row Records and other record companies and recording artists, for her own personal and financial gain.

10. Specifically, in or about July or August, 1995, Tucker attempted to pressure Death Row Records into severing its relationship with Interscope and appointing Tucker and her associates as Death Row Records's exclusive representative to negotiate a production and distribution agreement directly with Time Warner. As Tucker well knew, if Death Row Records proceeded on that course, it would result in a breach by Death Row Records of the Death Row Records Contract and a breach by Atlantic and Time Warner of their fiduciary obligations to Interscope, which would effectively destroy Interscope.

11. In order to induce Death Row Records to accede to her unlawful demands, Tucker engaged in extortion and other improper conduct in or about July and August of 1995, including the following:

(a) In a meeting in Seattle, Washington, attended by Suge Knight ("Knight"), the Chairman of Death Row Records, David Kenner ("Kenner"), the attorney for Death Row Records, and others, Tucker told Knight that she wanted to set up a record distribution company which she would control, and in which Knight would have an interest. She made it clear to Knight that Death Row Records' willingness to break away from Interscope was an integral part of her scheme. Tucker stated that she had had numerous private conversations about her plan with Gerald Levin ("Levin"), the Chairman of the Board of Directors of Time Warner, and Michael Fuchs ("Fuchs"), the Chairman of the Warner Music Group, and

that they were prepared to support Tucker by putting up "incredible amounts of money." Tucker stated, however, that Levin and Fuchs would go along with Tucker only if they believed that Tucker had the ability to control the lyrics on recordings produced by Death Row Records. Therefore, Tucker attempted to induce Knight into deceiving Levin and Fuchs into believing that she could control the lyrics, even though Knight made it clear to Tucker that he would not permit such control. In order to accomplish her deception, Tucker sought to have Knight agree to a false and fraudulent press release, and to stand beside Tucker at a press conference to falsely convey to Levin and Fuchs that she could control Knight and Death Row Records.

(b) In numerous telephone calls and meetings thereafter, Tucker and her associates threatened Knight that if he did not cause Death Row Records to break away from Interscope, Tucker would use her power and influence, and would cause Time Warner to use its power and influence, to get the Government "to go after" Knight and his attorney by investigating and prosecuting them. Knight was specifically threatened that as a result he would spend the rest of his life in jail.

(c) Furthermore, Tucker and her associates threatened that if Knight did not cause Death Row Records to break away from Interscope, Tucker would use her influence with the press, and Time Warner would use "billions of dollars to manipulate the press" to

destroy Knight and Death Row Records. Knight was told, "Even something completely innocent can be made to look terrible."

(d) Tucker told Knight that he could avoid terrible consequences if he would cooperate with her, that Time Warner would pay him "an enormous amount of money," and that Knight would be given an ownership interest in her contemplated record distribution company, if Knight would authorize Tucker and her associates to negotiate a deal on behalf of Death Row Records with Time Warner, which would "eliminate Interscope."

(e) Subsequently, Tucker claimed that she had spoken with Fuchs, and that Fuchs was prepared to have Time Warner pay Knight $80 million, and build two state of the art recording studios for him, if Knight would cooperate with Tucker.

(f) Tucker and her associates continued to apply pressure upon Knight and Death Row Records. On August 7, 1995, Tucker or her associates told Knight that Fuchs was flying from New York to Los Angeles that evening "to close the deal" with Knight. Tucker delivered to Knight a letter for Knight's signature, which Tucker had prepared, which would appoint Tucker and her associates as Death Row Records' exclusive representative to negotiate an "acceptable contract relationship with Time Warner regarding the production and distribution" of Death Row Records' recordings.

(g) Throughout Wednesday, August 8, 1995, Knight received numerous telephone messages from Tucker or her associates that Fuchs was at Dionne Warwick's home in Los Angeles waiting to meet with Knight. As the day progressed, they told Knight that Fuchs had assured them that if he was not satisfied with the terms previously proposed to Knight to eliminate Interscope, Fuchs was willing to be flexible in the negotiations. Finally, Knight was told that Fuchs had been waiting for eight hours to meet with Knight, and had to get on a plane to fly back to New York, and, therefore, Knight was urged to immediately meet with Tucker, Fuchs and others to consummate a deal.

(h) During the evening of August 8, 1995, Knight received a telephone call from Tucker or her associates stating that Fuchs was flying back to New York, and wanted to call Knight from his airplane.

12. The foregoing conduct by Tucker and her associates was unlawful, in bad faith, and in furtherance of her scheme and conspiracy.

FIRST CLAIM FOR RELIEF

[Inducing Breach of Contract, Interfering with Contractual Relations and Prospective Business Advantage]

13. Interscope realleges and incorporates by reference Paragraphs 1 through 12, inclusive, as though set forth at length.

14. The Death Row Records Contract is a valid and existing contract between Interscope and Death Row Records. Interscope is informed and believes, and on that basis alleges, that Tucker had knowledge of the Death Row Records Contract and intentionally attempted to induce a breach by Death Row Records or to disrupt the Death Row Records Contract through unlawful means. In so doing, Tucker's purpose was to damage Interscope's credibility with recording artists, songwriters, and producers, and to interfere with Interscope's prospective business advantage, in order to accomplish her scheme of establishing a record distribution company which would, among other things, distribute recordings, produced by Death Row Records.

15. As a direct result of the actions of Tucker and her associates, the contractual relationship between Interscope and Death Row Records has been disrupted, and Interscope has suffered actual and potential damages in an amount as yet unknown. Interscope shall amend its complaint to set forth the amount of its damages when ascertained.

16. The wrongful acts by Tucker were willful, wanton, malicious, and oppressive, and were undertaken with the intent to injure Interscope and to further Tucker's scheme and conspiracy to establish a record distribution company for her own profit and gain. Such conduct therefore justifies an award of exemplary and punitive damages in an amount to be proven at trial.

SECOND CLAIM FOR RELIEF

[Injunctive Relief]

17. Interscope realleges and incorporates by reference its allegations in paragraphs 1 through 12, inclusive, as though set forth at length.

18. Interscope is informed and believes, and on that basis alleges, that Tucker, and others acting in concert with Tucker, intend to continue to cause damage and injury to Interscope unless enjoined, by, among other things, (a) seeking to induce Death Row Records to breach the Death Row Records Contract, (b) interfering with the Death Row Records Contract, and (c) interfering with Interscope's prospective business advantage.

19. Interscope has suffered and will continue to suffer irreparable harm, for which Interscope does not have an adequate remedy at law, unless Tucker and her associates are enjoined.

20. Accordingly, Interscope is entitled to a preliminary injunction and permanent injunction prohibiting Tucker, and all those acting in concert with Tucker, from (a) attempting to induce Death Row Records, or any other party to a contract with Interscope, to breach any existing contract; (b) interfering with Interscope's existing contractual relationships; and (c) tortiously interfering with Interscope's prospective business advantage.

THIRD CLAIM FOR RELIEF

[Injunctive Relief For Attempting To Induce A Breach of Fiduciary Duty]

21. Interscope realleges and incorporates by reference its allegations in paragraphs 1 through 12, inclusive, as though set forth at length.

22. Tucker knowingly, willfully and intentionally, and through the use of unlawful means, has attempted to induce Time Warner, and its subsidiary, Atlantic, to breach their fiduciary obligations to Interscope, and to destroy the relationship between the partners comprising Interscope.

23. Interscope is informed and believes, and on that basis alleges that, unless enjoined, Tucker intends to continue to attempt to induce Time Warner and Atlantic to breach their fiduciary obligations to Interscope. Such unlawful conduct by Tucker and her associates will continue to disrupt the relationship between the

partners comprising Interscope, will create uncertainty in the music industry about Interscope's stability and viability, and will cause a loss of credibility and other irreparable harm to Interscope.

24. Interscope does not have an adequate remedy at law for the full amount of damages and injury suffered as a result of the unlawful actions by Tucker and her associates.

25. Accordingly, Interscope is entitled to a preliminary injunction and permanent injunction prohibiting Tucker, and all those acting in concert with her, from seeking to induce Time Warner and/or Atlantic to breach their fiduciary obligations to Interscope, or to otherwise unlawfully interfere with the business relationship between the partners comprising Interscope.

FOURTH CLAIM FOR RELIEF

[Unfair Business Practices and Unfair Competition]

26. Interscope realleges and incorporates by reference its allegations in paragraph 1 through 12, inclusive, as though set forth at length.

27. The wrongful conduct by Tucker and her associates alleged above constitutes unfair business practices and unfair competition

in violation of Interscope's rights under California Business and Professions Code Section 17200 *et seq.*

28. As a direct and proximate result of the foregoing unfair and unlawful conduct, Interscope has incurred irreparable harm and has been deprived of its property rights for which Interscope has no remedy at law.

29. Interscope is entitled to a preliminary *injunction and* a permanent injunction to prohibit Tucker, and all those acting in concert with her, from violating the foregoing statute; and Interscope is further entitled to all other relief against Tucker and her associates as is authorized by the statute.

WHEREFORE, Plaintiff prays judgment as follows:

1. For compensatory damages in amount to be proven at trial;

2. For exemplary and punitive damages in an amount to be proven at trial;

3. For a preliminary injunction and permanent injunction to restrain Tucker, and all those acting in concert with her, from continuing to engage in extortion and other unlawful activities for the purpose of (a) inducing or attempting to induce a breach of

contract by any party to a contract with Interscope, including but not limited to the contract between Death Row Records and Interscope; (b) interfering with Interscope's prospective business advantage; (c) inducing or attempting to induce Time Warner and/or Atlantic to breach their fiduciary obligations to Interscope; (d) interfering with the business relationship between the partners comprising Interscope; and (e) engaging in unfair business practices and/or unfair competition.

4. For reasonable attorneys fees and costs expended in the prosecution of this action, to the full extent permitted by law;

5. For pre-judgment interest to the full extent authorized by law; and

6. For such other and further relief as this Court may deem just and proper.

DATED: August 15, 1995

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
CASE NO. 95-5503
(Related Case No. 95-5444RMT(CTx))

DEATH ROW RECORDS, INC., a California corporation, Plaintiff, vs. C. DELORES TUCKER, NATIONAL POLITICAL CONGRESS OF BLACK WOMEN, INC., TIME WARNER. INC., WARNER MUSIC GROUP. INC., MICHAEL FUCHS., and GERALD LEVY, Defendants.	COMPLAINT FOR VIOLATIONS OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT; INTENTIONAL INTERFERENCE WITH CONTRACT AND PROSPECTIVE BUSINESS ADVANTAGE; EXTORTION; UNFAIR BUSINESS PRACTICES; ABUSE OF PROCESS; CLAIM FOR INJUNCTIVE RELIEF AND DAMAGES DEMAND FOR JURY TRIAL

Plaintiff brings this action against Defendants for the claims specified below and seeks injunctive relief and damages as follows:

I. INTRODUCTION AND OVERVIEW OF ACTION

1. This is an action by Death Row Records, Inc. (hereinafter referred to as "Death Row Records") against individuals C. Delores Tucker (hereinafter referred to as "TUCKER"), the National Political Congress of Black Women (hereinafter referred to as "NPCBW"), Time Warner, Inc. (hereinafter referred to as "TIME WARNER"), Warner Music Group, Inc. (hereinafter referred to as

"WARNER MUSIC"), Michael Fuchs (hereinafter referred to as "FUCHS") and Gerald Levin (hereinafter referred to as "LEVIN"). This action seeks injunctive relief and damages against Defendants for multiple violations of the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U. S. C. §§1961-68, as well as various other violations of federal and state laws.

Introduction to the Parties:

2. Death Row Records is a African-American owned independent record company founded approximately three years ago. Its artists are among the most popular in the music industry and its success is virtually unparalleled. Since approximately 1992, Death Row Records has had an exclusive contract with Interscope Records, whereupon Interscope Records has been the sole distributor of Death Row Records' recordings. Interscope Records is a general partnership, which is an affiliate of TIME WARNER, who holds a fifty-percent interest in all Interscope Records holdings.

3. Defendant TUCKER is the National Chair of the NPCBW organization. While the specific purposes of this organization are unknown to plaintiffs, its title suggests a purpose of promoting the role of African-American women in this nation. The allegations against Defendant TUCKER, set forth in this complaint, include her actions as a representative or officer of this organization, as well as her actions as an individual, in furtherance of the enterprise alleged in this complaint.

4. The NPCBW organization is further alleged as a separate Defendant responsible for the acts in furtherance of the enterprise as alleged in this complaint.

5. TIME WARNER, a corporation with its principal place of business in New York, owns a fifty percent share of Interscope Records and by its conduct has acted unlawfully in its business practices and its dealings in concert with Defendant TUCKER and NPCBW in furtherance of the enterprise against the interest of Plaintiff alleged in this complaint.

6. WARNER MUSIC, a corporation which is an affiliate of Defendant TIME WARNER, has acted unlawfully, through its

business practices and its dealings with Defendant TUCKER in furtherance of the enterprise alleged in this complaint.

7. LEVIN is the Chairman of the Board of Directors of Defendant TIME WARNER , and FUCHS is Chairman of the Defendant WARNER MUSIC. Defendant FUCHS and LEVIN, both as individuals as well as in their representative capacity, have acted unlawfully in their business practices and their dealings with and through Defendant TUCKER, and in furtherance of the enterprise alleged in this complaint.

Overview of the Action:

8. The success of Death Row Records as an independent record company is virtually unparalleled. Since its inception, Death Row Records has sold approximately fourteen million records accounting to gross receipts in excess of $100 million. Although Death Row Records' artist roster includes significant talent in the rhythm and blues genre, it also releases rap music. Rap music is a style of music wherein a combination of talking, as well as singing, is set to hip-hop style music. Death Row Records' principal artists, most notably Dr. Dre and Snoop Doggy Dog, have "crossed over" from appearing regularly on the rap charts to noticeable appearances on the rhythm and blues charts as well. The music charts are an expression of the sales and popularity of various forms of recorded music.

9. Much of Death Row Records' music chronicles the observations and experiences of young African-America, often describing experiences and observations arising from the urban ghettos of this country. These observations and experiences represent a part of life in America that is non-mainstream and that the government, prior to the popularity of rap music, was able to control, limit and keep from the middle class. The current appeal of this music to suburban America has caused great concern to the government, politicians and others, looking to benefit from and capitalize on these events.

10. Rap lyrics often describe observations and experiences previously shared only by those whose common denominator was an urban ghetto upbringing. However, these lyrics address subjects including abandonment, murder, rape, and a variety of other societal ills. These very same subjects when reported on and exploited by

network and other news-like broadcast shows in language understandable to their audience, are perceived to be nothing more than a way to increase ratings and profits for mainstream media. These networks and other news shows are not picketed because *they* only purport to describe and relate these events. As a result *they* are not accused of advocating the conduct about which they report.

11. While Death Row Records' rap artists, through their music and lyrics, do nothing more than report and explain societal ills, Death Row Records itself has been criticized, threatened, coerced, and held up to ridicule in a vicious and malicious attempt to curtail its success. These attacks are orchestrated to continue until the profits realized by Death Row Records can be redirected to the Defendants in such a way as to appear to appease these criticisms. These attacks which are originated by TUCKER and her cohort co-Defendants, are made not only in response to the music but in an attempt to enrich the Defendants themselves. The fact that history and news within the ghetto is conveyed by the observations and experiences of rappers in a "ghetto rhetoric" is, as compared to the network and other news shows, a distinction in form but not substance.

12. Although many of the expressions of the artists on the Death Row Records, label have been criticized as controversial, by some, the artistic freedom of expression the label provides to its artists allows them to convey their thoughts in a way that is meaningful to their primary audiences. Because interest in this form of expression transcends the ghetto and extends to every part of America, this artistic freedom of expression has contributed significantly in keeping Death Row Records on the cutting edge of relevance to its audience and a current industry leader.

13. Interscope Records has been a constant supporter of the artistic, intellectual and First Amendment rights of Death Row Records' recording artists since it became their distributor. The relationship between these entities and the public's great demand for Death, Row Records' music had established a solid business relationship and proved to be a lucrative venture.

14. For the past 13 months, Defendant TUCKER and the other Defendants have participated in a unlawful scheme to sub-

stantially interfere with and/or destroy the continuing and resulting success of Death Row Records and Interscope Records, for financial gain, furtherance of enterprise and control over musical content. As alleged in this complaint, this scheme generally began with Defendant TUCKER and possibly the other Defendants' commencing a smear campaign against Defendant TIME WARNER, Interscope Records and Death Row Records, premised on complaints about the "explicit" lyrical content of some of the music that was being released through these entities. This campaign, primarily directed toward Defendant TIME WARNER, was and is an apparent attempt to induce action through political pressure. Defendant TUCKER has made it clear on diverse occasions that one of her goals is to sever the ties between TIME WARNER and Interscope Records. In furtherance of this objective, she has written articles, appeared on television commercials and even picketed the TIME WARNER shareholder's meeting on or about June 1, 1995. Defendant NPCBW is believed to be funding, supporting, or otherwise contributing to Defendant TUCKER's campaign to force TIME WARNER to sever its relationship with Interscope Records, ostensibly due to the lyrics of some of the material recorded by Death Row Records artists.

15. As further alleged in this complaint, the actual motivation of Defendant TUCKER and other Defendants became apparent on July 7, 1995 when Defendant TUCKER, Dionne Warwick, Melba Moore and others arranged a meeting with representatives from Death Row Records in Seattle, Washington. Dionne Warwick and Melba Moore are African-American women with significant backgrounds in the area of recorded music. Representing Death Row Records at this meeting was Suge Knight, the Chief Executive Officer of Death Row Records (hereinafter referred to as "Knight"). During the course of this meeting, Defendant TUCKER indicated to Knight that her interest and goals went far beyond the mere regulation of lyrical content. Defendant TUCKER indicated that she was most interested in the formulation of an African-American owned and controlled distribution company in the music industry. It thereafter became readily apparent that this was the sole purpose for the presence of Warwick and Moore at this meeting. This July 7,

1995 meeting clearly illustrates how the campaign directed against Defendant TIME WARNER and its affiliated entities was nothing more than a calculated ruse to induce TIME WARNER to sever ties with Interscope Records which is not owned or controlled by African-Americans and deal directly with her new distribution company.

16. Factual allegations in this complaint further indicate the sum and substance of Defendant TUCKER's proposal at the July 7, 1995 meeting. Generally, Defendant TUCKER suggested that she would control the new distribution company that would be created in lieu of Interscope Records and that Knight would have some interest in said company. Defendant TUCKER made it clear that Death Row Records' willingness to break away from Interscope Records was an integral part of her plan, even though it was never represented at the meeting nor was it true that Death Row Records would break away from Interscope Records. Defendant TUCKER further stated that she had numerous private conversations with Defendants LEVIN and FUCHS, and that they were prepared to financially support Defendant TUCKER's endeavor with "incredible amounts of money." Defendant TUCKER stated, however, that LEVIN and FUCHS would only go along with her plan if they believed that she had the ability to control the lyrics on Death Row Records recordings.[1] At that time, Knight clearly indicated to Defendant TUCKER that he stands behind the artistic expression of the Death Row Records artists and that he would not permit any such control over the lyrical content of the music.

17. Through their course of conduct, actions and dealings, Defendants TUCKER, FUCHS, LEVIN, TIME WARNER, and WARNER MUSIC are all alleged to have acted in furtherance of the enterprise set forth in this complaint as the loose-knit association-in-fact for the purpose of establishing a distribution company maintained by Defendant TUCKER for the purpose of doing business with TIME WARNER.

18. The majority of the remaining allegations contained in this complaint involve unlawful racketeering, fraud, extortion and other deceptive and overt acts committed by the Defendants, in an at-

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[1] Defendants LEVIN and FUCHS were in fact willing to aid and abet Defendant TUCKER's illegal financial coup provided that they would also provide Defendant TIME WARNER sufficient cover from political and media criticism.

tempt to fraudulently negotiate a contract for Defendant TUCKER's new distribution company with TIME WARNER and to force Knight and Death Row Records to break, away from Interscope Records and agree to be distributed by this new distribution company.

III. JURISDICTION AND VENUE

19. Jurisdiction exists in this action pursuant to 28 U.S.C. § 1331, since substantial federal questions are presented under the Racketeer Influenced and Corrupt Organizations Act ("RICO"); 18 U.S.C. §§ 1961-68. This Court has pendant and supplemental jurisdiction over the remaining claims.

20. Venue is properly laid in this District pursuant to 28 U.S.C. §§ 1391 and 1392. Death Row Records believes and thereupon alleges that, at all relevant times, the Defendants engaged in certain wrongful acts alleged below in the Central District of California, Western Division, and engaged in other unlawful acts outside this District, which caused injury to Death Row Records in this district.

IV. THE PARTIES

21. *Plaintiff:*

a. Death Row Records is a corporation incorporated under the laws of the State of California having its principal place of business in the State of California, Central District, Western Division. Therefore, Death Row Records is and was at all times mentioned herein a citizen of the State of California, by virtue of its incorporation and principal place of business.

22. *Defendants:*

a. Death Row Records upon information and belief, and on the basis of such information and belief alleges that Defendant TUCKER, an individual, resides in and is a citizen of a state other than California.

b. Death Row Records is informed and believes, and on the basis of such information and belief alleges that NPCBW is a corporation doing business as a nonprofit organization and is incorporated under the laws of the District of Columbia having its principal place of business in Washington, D. C.

c. The citizenship of Michael FUCHS is unknown to Death Row Records at the time of this pleading.

d. The citizenship of Gerald LEVIN is unknown to Death Row Records at the time of this pleading.

e. Death Row Records is informed and believes, and on the basis of such information and belief alleges that TIME WARNER is a corporation incorporated in the State of Delaware having its principal place of business in New York City, New York.

f. Death Row Records is informed and believes, and on the basis of such information and belief alleges that WARNER MUSIC is a corporation incorporated in the State of Delaware having its principal place of business in New York City, New York.

V. GENERAL ALLEGATIONS

23. Death Row Records is a California corporation doing business in Los Angeles County.

24. Death Row Records' recordings are distributed by Interscope Records, an affiliate of TIME WARNER, pursuant to an exclusive distribution agreement (hereinafter referred to as the "Death Row Records Contract").

25. Death Row Records' contractual relationship with Interscope Records, and TIME WARNER's involvement with the Interscope Records partnership have been widely publicized and, upon information and belief, are known by all Defendants.

26. Since the execution of the Death Row Records Contract, Death Row Records and Interscope Records have supported the First Amendment rights of their artists, in their freedom of expression and have had unified their defenses against criticism.

27. Beginning in mid-1995 and continuing to the present, Defendants and others whose identities are currently unknown to Death Row Records embarked upon and have continued to engage in a scheme and conspiracy to destroy the goodwill and contractual relationship between Death Row Records and Interscope Records by committing extortion, threats and other unlawful acts. Among other things, Defendants have done the following to harm Death Row Records:

a. Attempted to force or compel Death Row Records to breach the Death Row Records distribution Contract with Interscope Records.

b. Interfered with Death Row Records' valuable relationship with Interscope Records.

c. Damaged Death Row Records' reputation and credibility in the music industry.

d. Attempted to interfere with the artistic expression and First Amendment rights of Death Row Records' artists.

28. Based upon information and belief, the unlawful acts causing the harms listed in the preceding paragraph, were pursued for personal and financial gain by the Defendants.

29. It is further based on information and belief that the unlawful acts referenced above were pursued in order to create a new record distribution company, apart from Interscope Records, to distribute records produced by Death Row Records and other record companies and recording artists.

30. It is further based on information and belief that the unlawful acts referenced above were pursued in order for Defendants to regulate the lyrical content of the recordings produced by Death Row Records and other record companies and recording artists.

Defendant TUCKER Positions Herself and Sets the Stage for Bargaining:

31. Based upon information and belief, Defendant TUCKER holds the position of National Chair of NPCBW, an organization with the alleged purpose of promoting the role of African-American women.

32. Based upon information and belief, Defendant TUCKER, NPCBW and others unknown to plaintiff at this time, instituted a campaign against what Defendant TUCKER has termed music containing "explicit" lyrics.

33. Based upon information and belief, the alleged purpose of this campaign against "explicit" lyrics was to regulate the content of song lyrics, specifically lyrics of rap music and to put political pressure on companies which supported such music.

34. Based upon information and belief, TIME WARNER was singled out by Defendants TUCKER, NPCBW and others unknown to Plaintiffs at this time for their support of music with "explicit" lyrics, and more specifically, for their part-ownership of Interscope Records.

35. Based upon information and belief, Defendant TUCKER appeared on television, radio, and in newspapers, nationwide, with her criticism against TIME WARNER for supporting music containing "explicit" lyrics. At all times material in her public posturing, Defendant TUCKER did not disclose her ulterior motive to replace and supplement Interscope Records as the distributer of the recorded output of Death Row Records. This commercial goal was hidden and obscured by Defendant TUCKER.

36. During the year 1995, Defendant TUCKER appeared at a shareholder meeting for TIME WARNER where she picketed in front and publicly denounced TIME WARNER for their support of music containing "explicit" lyrics, and its alleged denigration of African-American women.

37. Based upon information and belief, Defendants TUCKER, NPCBW and others unknown to plaintiffs at this time recruited and joined forces with former education secretary William Bennett, to create political pressure on TIME WARNER to regulate music containing "explicit" lyrics.

38. Based upon information and belief, Defendant TUCKER, NPCBW and others unknown to plaintiffs at this time, encouraged, entreated or enlisted United States Senator Robert Dole and other politicians to join in its criticism against TIME WARNER and other companies which were then involved in the production of music containing "explicit" lyrics. The sole purpose of these acts was to increase the political pressure on TIME WARNER.

39. Based upon information and belief, TIME WARNER, WARNER MUSIC, FUCHS and LEVIN held meetings with Defendant TUCKER and others unknown to plaintiffs at this time to discuss DefendantTUCKER's concerns about the content of the music produced by companies supported by TIME WARNER. At one of these meetings upon information and belief, Defendant TUCKER disclosed

to Defendants FUCHS, LEVIN and their respective corporations her intent not only to restrain the creative actions of Death Row Records' artists, but to participate in the formation of a new company to replace Interscope Records as Death Row Records' distributor.

Defendant TUCKER Orchestrates Meeting in Seattle:

40. At or about July 1995, a meeting was held by and between Defendant TUCKER, Warwick, Moore, Knight and others in Seattle, Washington. Knight was told prior thereto that the purpose of this meeting would be to discuss Defendant TUCKER's concerns about lyrics on recordings by Death Row Records. Defendant TUCKER upon commencement of the meeting commented on the fact that while no African-American record distribution company exists, one should now be created. Defendant TUCKER further informed Knight that it was her desire to create this new record distribution company which she would control and in which Knight would have some interest.

41. At the aforementioned meeting, Defendant TUCKER made it clear to Knight that Death Row Records' willingness to break away from Interscope Records, was an integral part of her scheme to create her own African-American distribution company. Defendant TUCKER acknowledged that Death Row Records' success and market share would provide her new company with immediate economic viability.

42. Defendant TUCKER represented to Knight that she had numerous private conversations with LEVIN and FUCHS about her plan and that they were prepared to support Defendant TUCKER by putting up "incredible amounts of money" to pay Death Row Records if it agreed to breach its agreement with Interscope Records. Defendant TUCKER stated, however, that LEVIN and FUCHS would cause the corporate Defendants to cooperate with Defendant TUCKER only if they were assured that Defendant TUCKER had the ability to control and censor the lyrics on all recordings produced by Death Row Records.

43. Knight responded to Defendant TUCKER's demands by stating that he would vigorously defend the artistic and expressive rights of his artists and would not enter into any agreement which would regulate the content of his artist's or company's music or lyrics.

44. Based upon information and belief, Defendant TUCKER

then attempted to induce Knight into deceiving LEVIN, FUCHS and TIME WARNER into believing that she would control the lyrics, even though Knight made it clear to her that he would not countenance such control.

45. Based upon information and belief, in order to accomplish her deception, Defendant TUCKER attempted to have Knight agree to a fraudulent press release. The purpose of the press release was to falsely convey to LEVIN, FUCHS and TIME WARNER that she could control both Knight and Death Row Records and its artists. Knight refused to sign this press release and agreed to sign a simple one line statement to the effect that he was aware of the existence of Defendant TUCKER's organization and her concerns about lyrical content. Both of these statements were true.

46. Based upon information and belief, after Knight refused to sign the fraudulent press release demanded by Defendant TUCKER, Defendant TUCKER then asked Knight to stand next to her at a press conference to verify he was aware of her concerns and her organization. Defendant TUCKER' s undisclosed purpose was to falsely convey to LEVIN and FUCHS that she had Knight's approval and that he had agreed to allow her to regulate Death Row Records' music and lyrics. This purpose was wholly unknown to Knight.

47. Having been completely uninformed that a press conference had been called, to commence immediately after this meeting, and disapproving of any fraudulent innuendo that may be drawn from him standing next to Defendant TUCKER at said conference, Knight refused to stand next to Defendant TUCKER or even remain present for the conference.

Threats Instigated Against Knight and Death Row Records

48. In the days following the meeting in Seattle, Defendant TUCKER and persons acting on her behalf and on behalf of NPCBW made numerous phone calls to Knight in which Knight was threatened that if he did not cause Death Row Records to break away from Interscope Records, Defendant TUCKER and NPCBW would use their powers and the influence of the above mentioned enterprise, to cause the government "to go after" Knight, by investigating and prosecuting him for fictitious offenses. Knight was spe-

cifically threatened that as a result of the use of the "enterprise's" (Defendant TUCKER and NPCBW) power and influence that Knight would spend the rest of his life in jail.

49. In the phone calls referenced above, Defendant TUCKER and persons acting on her behalf and on the behalf of NPCBW further threatened that they would use their influence with the press and cause TIME WARNER to use "billions of dollars to manipulate the press" in an effort to destroy Knight and Death Row Records. Knight was told directly by Defendant TUCKER that "even something completely innocent can be made to look terrible." Defendant TUCKER told Knight that he could avoid these terrible consequences if he would cooperate with her. He was further told that TIME WARNER would pay him "an enormous amount of money" and he would be given an ownership interest in her contemplated record distribution company. Finally, he was told that all this would occur if Knight would authorize Defendant TUCKER and her associates to negotiate a deal with TIME WARNER which will "eliminate Interscope Records" and substitute her African-American distribution company.

50. Subsequent to the phone calls referenced above, Defendant TUCKER again personally phoned Knight. In this phone conversation she claimed that she had spoken with FUCHS and that he was prepared to have TIME WARNER pay Knight eighty million dollars and build two state-of-the-art recording studios for him, if he would cooperate with Defendant TUCKER and eliminate his legal relationship with Interscope Records.

51. From late July to early August, Defendant TUCKER and her associates continued to apply unlawful pressure upon Knight and Death Row Records. The threats, extortion and commercial bribery attempts continued incessantly.

52. On August 7, 1995, Defendant TUCKER or her associates informed Knight that Defendant FUCHS was flying from New York to Los Angeles that evening to "close the deal" with Knight. As there was no agreed upon deal, Knight was unsure of why Defendant FUCHS was coming to Los Angeles.

53. Defendant TUCKER then delivered to Knight a letter for Knight's signature, which Defendant TUCKER had prepared and

which would serve to appoint Defendant TUCKER and her associates as Death Row Records' exclusive representative to negotiate an acceptable contractual relationship with TIME WARNER regarding the production and distribution of Death Row Records' recordings. At no time prior to the presentation of this letter had Knight ever agreed to either its content or its terms. A true and correct copy of the aforementioned letter is attached hereto as Exhibit (1) and incorporated by reference hereto and incorporated by reference.

54. Upon information and belief at or about the same time, FUCHS, after conferring with the Defendant LEVIN determined that it was the position of both Defendants LEVIN and TIME WARNER to agree to virtually any financial demand made in favor of Defendant TUCKER and NPCBW. The acquiescence to the extortion was made in a calculated effort to deflect the continuing onslaught of political criticism then being generated by Defendants TUCKER and NPCBW. As a result FUCHS was directed by LEVIN to cut any deal demanded and was further instructed to go personally to Los Angeles to save Defendant TIME WARNER any further embarrassment arising from the criticism of TIME WARNER's involvement in the rap genre.

55. Throughout August 8, 1995, Knight continued to receive numerous telephone messages from Defendant TUCKER, and/or her associates, informing him that FUCHS was at Warwick's home in Los Angeles waiting to meet with Knight. As the day progressed, Defendant TUCKER, and those acting on her behalf, informed Knight that FUCHS had assured them that if Knight was not satisfied with the terms previously proposed to him to breach the Interscope Records agreement, FUCHS would be flexible in the negotiations. Knight was further informed that FUCHS had been waiting for eight hours to meet with Knight and had to leave for the airport to return to New York. Knight was further urged to immediately meet with Defendants TUCKER, FUCHS and others to consummate the deal. Upon information and belief, the trip to Los Angeles for this meeting was made exclusively to sign the aforementioned "deal" with Knight. It is further alleged upon information and belief that Defendant FUCHS had used the Time Warner corporate aircraft to travel to and from Los Angeles for this desired meeting.

56. During the evening of August 8, 1995, Knight received another telephone call from Defendant TUCKER or one of her

associates, stating that FUCHS was airborne to New York and wanted to determine if Knight would accept a call from the air. Knight demurred.

57. Knight refused to attend the meeting with FUCHS and Defendant TUCKER in Los Angeles or to receive a call from FUCHS on his airplane, despite the numerous phone calls and requests, for him to appear, or talk with FUCHS. Based upon information and belief, FUCHS's flight to Los Angeles was for the sole purpose of inducing Death Row Records to break their contract with Interscope Records and sign some form of an agreement directly with TIME WARNER which allowed Defendant TUCKER and her African-American company the distribution rights to the recorded output of Death Row Records.

58. On August 9, 1995, Knight sent a letter to Warwick, Defendant TUCKER and FUCHS which stated that he would not allow Death Row Records to enter into any contract which regulated the content of his artist's or company's lyrics. A true and correct copy of the aforementioned letter is attached hereto as Exhibit (2) and incorporated by reference. hereto and incorporated by reference.

59. Upon information and belief, from the time of the meeting in Seattle to present, Defendant TUCKER has made no further public statements criticizing rap music lyrics. In coordination with Defendant TUCKER's incorrect assumption that Knight was prepared to sign an agreement, this abstention is consistent with Defendant TUCKER's obvious pecuniary interest which was communicated at the Seattle meeting.

VI. SPECIFIC ALLEGATIONS

First Cause of Action

(Racketeering 1962 (b) and (c))

60. Death Row Records reallege and incorporates by reference paragraphs 159, inclusive, as though set forth at length.

The Enterprise:

61. At all times relevant to this complaint, Defendants TUCKER, NPCBW and others unknown to plaintiff at this time, joined together to form an "enterprise" as defined by Title 18 United States Code § 1961(4), that is, a group of individuals associated in fact which functions as a continuing unit with an ascertainable

structure separate and distinct from that of the conduct of the patteft, of racketeering activity. Based on information and belief, Death Row Records alleges that the Defendants intend to establish and own an interest or control in a record distribution company controlled by Defendant TUCKER. It is further alleged that this record distribution company has as its principal unlawful aim to acquire the distribution rights of Death Row Records and induce them to terminate their lawful relationship with Interscope Records. The means used by the enterprise to accomplish this goal include but are not limited to extortion, mail fraud, wire fraud, interference with interstate commerce, and a conspiracy to do any and all of the aforementioned acts. The looseknit association of the Defendants to further this purpose and the distribution company that they are attempting to establish is an "enterprise" within the meaning of 18 U.S.C. §1961(4). Defendants FUCHS, LEVIN, TIME WARNER and WARNER MUSIC are aiding and abetting the enterprise by tacitly agreeing to and supporting the illegitimate goals of the enterprise in an effort to deflect the current political pressure being exerted against Plaintiffs by Defendants TUCKER and NPCBW. FUCHS, LEVIN and the TIME WARNER Defendants are acting through the enterprise to defuse the tempest concerning the rap lyrics and are willing to allow the Plaintiffs to be exploited by the enterprise

62. Among the enterprise's associates' legitimate purposes are the promotion of the role of African-American women and to regulate the contents of lyrics contained in rap music. Among the enterprise's associates' illegitimate purposes are to induce Death Row Records to breach its contract with Interscope Records. Subsidiary to and in addition to these goals, Defendants have resorted to illegal means to accomplish these objectives.

63. The above described enterprise is comprised of Defendant TUCKER and NPCBW, a nonprofit corporation pursuing, among other things, legal objectives in states unknown to plaintiff at this time. NPCBW is involved in the legal operation of its nonprofit organization. TIME WARNER which is in this instance acting through the enterprise is a legally operated conglomerate with the majority of its subsidiaries involved in the media industry.

64. The individual Defendants are involved with each other in

the legal activities of the corporate Defendants, as well as in the illegal activities alleged herein.

65. All individual Defendants alleged herein and corporate Defendants alleged herein are "persons" within the meaning of 18 U.S.C. § 1961(3), each existing separately and apart form the enterprise.

Pattern of Racketeering Activity:

66. Defendants are attempting to acquire or maintain an interest in or control of the above mentioned enterprise, through a pattern of racketeering activity in direct violation of 18 U.S.C. § 1962 (b). The Defendants are conducting or participating, directly or indirectly, in the conduct of the enterprise's affairs through a pattern of racketeering activities described below in direct violation of 18 U.S.C. §1962 (c). The predicate criminal acts constitute a pattern of open ended continuity to a complex scheme and pose a further threat of future criminal conduct through acts of racketeering. The multiple predicate acts are set forth below and all contributed to the Defendant's acquisition or maintenance of an interest in or control of the aforementioned enterprise:

a) *Extortion:* Death Row Records alleges that Defendants have obtained or have sought to obtain property from Death Row Records by a wrongful use of force or fear against Knight in order to induce the consent of Death Row Records to provide such property. On or about July 7, 1995 Defendant TUCKER and her representatives made numerous threatening phone calls to Knight, with the purpose of forcing Death Row Records to break away from Interscope Records and negotiate with Defendant TUCKER's new distribution company and TIME WARNER. The Defendants' wrongful use of force or fear was the direct and proximate cause of economic harm or loss of property to Death Row Records. The actual and prospective amounts of damages to Death Row Records are currently unknown at this time, and will be proved at trial. The Defendants' wrongful use of force or fear was willful, wanton, malicious, and oppressive, and was undertaken with the intent to injure Death Row Records, as well as to further Defendants' scheme and conspiracy to establish a record distribution company created under a false pretense.

b) *Mail Fraud (18 U.S.C. 1841):* That Defendants have de-

vised a scheme or artifice to defraud using the mails in furtherance of the scheme Defendant TUCKER delivered to Knight a letter for his signature which Defendant TUCKER had prepared and which would appoint her and her associates as Death Row Records' exclusive representative to negotiate an acceptable contractual relationship with TIME WARNER, this letter fraudulently purported that Knight had already agreed to said arrangement.

c) *Wire Fraud (18 U.S.C. §1343):* Defendants have used the wires, radio, or television communications in furtherance of the above referenced scheme with the specific intent to deceive or defraud, as alleged in paragraphs 48-59. Defendants' fraudulent conduct was the direct and proximate cause of economic harm to Death Row Records. The actual and prospective amounts of damages to Death Row Records are currently unknown at this time, and will be proved at trial. Defendants' fraudulent conduct was willful, wanton, malicious, and oppressive, and was undertaken with the intent to defraud Death Row Records, as well as to further Defendants' scheme and conspiracy to establish a record distribution company created under a false pretense.

d) *Interference with Interstate Commerce (18 U.S.C. § 1951-2):* Death Row Records alleges that Defendants unlawfully interfered with interstate commerce by transporting persons and things in interstate commerce in furtherance of this scheme and in violation of 18 U.S.C. §§1951-2.

e) *Conspiracy:* The Defendants, which constitute two or more persons, have acted in concert with each other to commit the above listed predicate acts which comprise a pattern of racketeering. The Defendants have acted in furtherance of this conspiracy, in violation of federal law.

67. As a result of Defendant's violations of 18 U.S.C. §1962 (b) and (c) in furtherance of the enterprise, Plaintiff has is entitled to recover treble damages, interest, attorney's fees and costs.

Second Cause of Action

(Racketeering 1962 (d))

68. Death Row Records reallege and incorporates by reference paragraphs 1-67, inclusive as though set forth at length.

69. Defendants TUCKER, NPCBW, FUCHS, LEVIN TIME WARNER and WARNER MUSIC, conspired with each other to violate the provisions of 18 U.S.C. §1962 (b) and (c), with the knowledge and intent that such acts were in furtherance of the enterprise's continuing and concerted course of conduct with the purpose and effect to induce Death Row Records and its principle to breach the legally enforceable contract with Interscope Records through fraud and coercion.

70. As a result of the conspiracy between and among the members of the enterprise and their efforts to harm the Plaintiff in violation of 18 U.S.C. § 1962 (b) and (c), Plaintiff has suffered damages.

71. Pursuant to 18 U.S.C. §1964 (c), Plaintiff is entitled to recover treble damages, interest, attorney's fees and costs.

Third Cause of Action

(Conspiracy To Interfere with
Advantageous Business Relationships)

72. Death Row Records reallege and incorporates by reference Paragraphs 1 through 71, inclusive, as though set forth at length.

73. The Defendants, which constitute two or more persons, have acted in concert with each other to commit the unlawful behavior alleged in paragraphs 23-59 of this complaint and have acted in furtheranee thereof, in violation of federal and state law.

Fourth Cause of Action

(Intentional Interference with Contract and
Prospective Business Advantage)

(State)

74. Death Row Records reallege and incorporates by reference Paragraphs 1 through 73, inclusive, as though set forth at length.

75. The "Death Row Records Contract" is a valid and existing contract between Death Row Records and Interscope Records. This

contract has provided and has the probability of providing in the future economic benefits to Death Row Records.

76. Upon information and belief, Defendants had knowledge of the "Death Row Records Contract" as well as the past and prospective economic benefit to the parties of the contract.

77. Defendants intentionally committed acts designed to disrupt the relationship between Death Row Records and Interscope Records by attempting to induce Death Row Records to breach the "Death Row Records Contract" through unlawful means (hereinafter referred to as "Defendants' wrongful conduct").

78. Defendants' wrongful conduct caused disruption of the relationship between Death Row Records and Interscope Records.

79. Defendants' wrongful conduct was the direct and proximate cause of economic harm to Death Row Records. The actual and prospective amounts of damages to Death Row Records are currently unknown at this time, and will be proved at trial.

80. Defendants' wrongful conduct was willful, wanton, malicious, and oppressive, and was undertaken with the intent to injure Death Row Records, as well as to further Defendants' scheme and conspiracy to establish a record distribution company created under a false pretense. Such conduct, therefore, justifies an award of exemplary and punitive damages in an amount to be proven at trial.

Fifth Cause of Action

(Extortion)

(State)

81. Death Row Records reallege and incorporates by reference Paragraphs 1 through 80, inclusive, as though set forth at length.

82. Defendants have obtained or sought to obtain property from Death Row Records by the wrongful use of force or fear against Knight with the purpose to induce Death Row Records to provide such property to Defendants. Defendants' wrongful use of force or fear was the direct and proximate cause of economic harm or loss of property to Death Row Records. The actual and prospective amounts of damages to Death Row Records are currently unknown

at this time, and will be proved at trial. Death Row Records alleges that Defendants' wrongful use of force or fear was willful, wanton, malicious, and oppressive, and was undertaken with the intent to injure Death Row Records, as well as to further Defendants' scheme and conspiracy to establish a record distribution company created under a false pretense.

Sixth Cause of Action

(Unfair Business Practices)

(State)

83. Death Row Records reallege and incorporates by reference Paragraphs 1 through 80, inclusive, as though set forth at length.

84. Defendants' wrongful conduct, alleged above, constitutes unfair business practices in violation of Death Row Records' rights under California Business and Professions Code, §§7200 et seq.

85. Defendants' unfair conduct was and will be the direct and proximate cause of irreparable harm to Death Row Records and that Death Row Records has been and will be deprived of its property rights for which Death Row Records has no remedy at law. Death Row Records will be irreparably harmed if an injunction is not issued enjoining Defendants from engaging in acts of bribery and extortion and enjoining Defendants from taking steps to interfere with Plaintiff's First Amendment rights to publish song lyrics.

86. The Plaintiff will be irreparably harmed in that if they acquiesce to Defendants extortion they will be forced to breech a valid contract. If Plaintiff does not acquiesce to the extortion, Plaintiff's song lyrics will be forcibly regulated by Defendant's actions

87. Death Row Records is, therefore, entitled to a temporary restraining order, preliminary injunction and permanent injunction by the foregoing statute to prohibit Defendants, and each of them, from violating the foregoing statute. Death Row Records is further entitled to all other relief against Defendants as authorized by the statute.

Seventh Cause of Action

(Abuse of Process)

(State)

88. Death Row Records reallege and incorporates by reference Paragraphs 1 through 87, inclusive, as though set forth at length.

89. Defendants have obtained or sought to obtain property from Death Row Records by threatening to fabricate and pursue a course of conduct designed to cause criminal and civil liability to Knight in order to induce the consent of Death Row Records to provide such property.

90. Defendants' wrongful use of the criminal and civil justice system was the direct and proximate cause of economic harm or loss of property to Death Row Records. The actual and prospective amounts of damages to Death Row Records are currently unknown at this time, and will be proved at trial.

91. Defendants' wrongful use of the criminal and civil justice system was willful, wanton, malicious, and oppressive, and was undertaken with the intent to injure Death Row Records, as well as to further Defendants' scheme and conspiracy to establish a record distribution company created under a false pretense. Such conduct, therefore, justifies an award of exemplary and punitive damages in an amount to be proven at trial.

Eighth Cause of Action

(Claim for Injunctive Relief)

92. Death Row Records reallege and incorporates by reference Paragraphs 1 through 91, inclusive, as though set forth at length.

93. Plaintiff requests this Court to permanently and temporarily enjoin Defendants from engaging in acts of extortion, from interfering with Plaintiff's First Amendment right to chose song lyrics, and from any other unlawful act alleged in this complaint.

94. If temporary and permanent injunctive relief is not granted, the Plaintiff will be irreparably harmed for which no adequate remedy at law exists. The Plaintiff will be irreparably harmed in that if they acquiesce to Defendants' extortion, they will be forced to

breach a valid contract. If Plaintiff does not acquiesce to the extortion, their song lyrics will be forcefully regulated by Defendant's actions, in violation of Plaintiff's First Amendment rights.

95. Accordingly, Death Row Records is entitled to a temporary restraining order, preliminary injunction and permanent injunction prohibiting Defendants from the acts described in paragraph 93.

WHEREFORE, plaintiff Death Row Records prays judgement for above alleged causes of action, as follows:

For the First And Second Causes of Action

1. For treble damages sustained by Death Row Records in an amount to be determined at trial.

For All Causes of Action

2. For compensatory damages in amount to be proven at trial;

3. For exemplary and punitive damages in amount to be proven at trial;

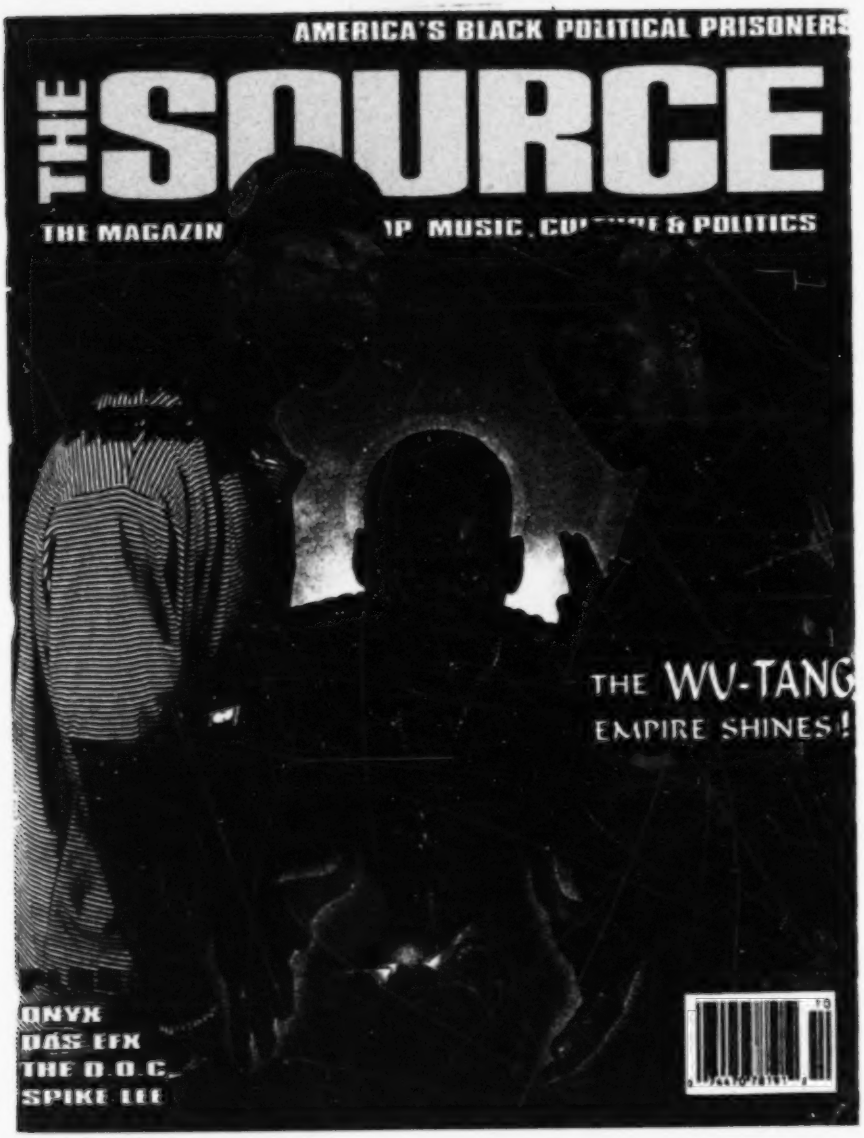
4. For a preliminary injunction and permanent injunction to restrain the Defendants, and all those acting in concert with them, from continuing to engage in violations of Racketeer Influenced and Corrupt Organizations Act, from continuing to engage in any of the predicate acts upon which such allegations are based and all other wrongful and unlawful activities set forth in this complaint;

5. For reasonable attorneys fees and costs expended in the prosecution of this action, to the full extent permitted by law; and

6. For such other and further relief as this Court may deem just and proper.

DATED: August 17, 1995

Law Offices of David E. Kenner
By: /s/ David E. Kenner
Attorney for Plaintiff,
Death Row Records, Inc.


AMERICA'S BLACK POLITICAL PRISONERS
THE SOURCE
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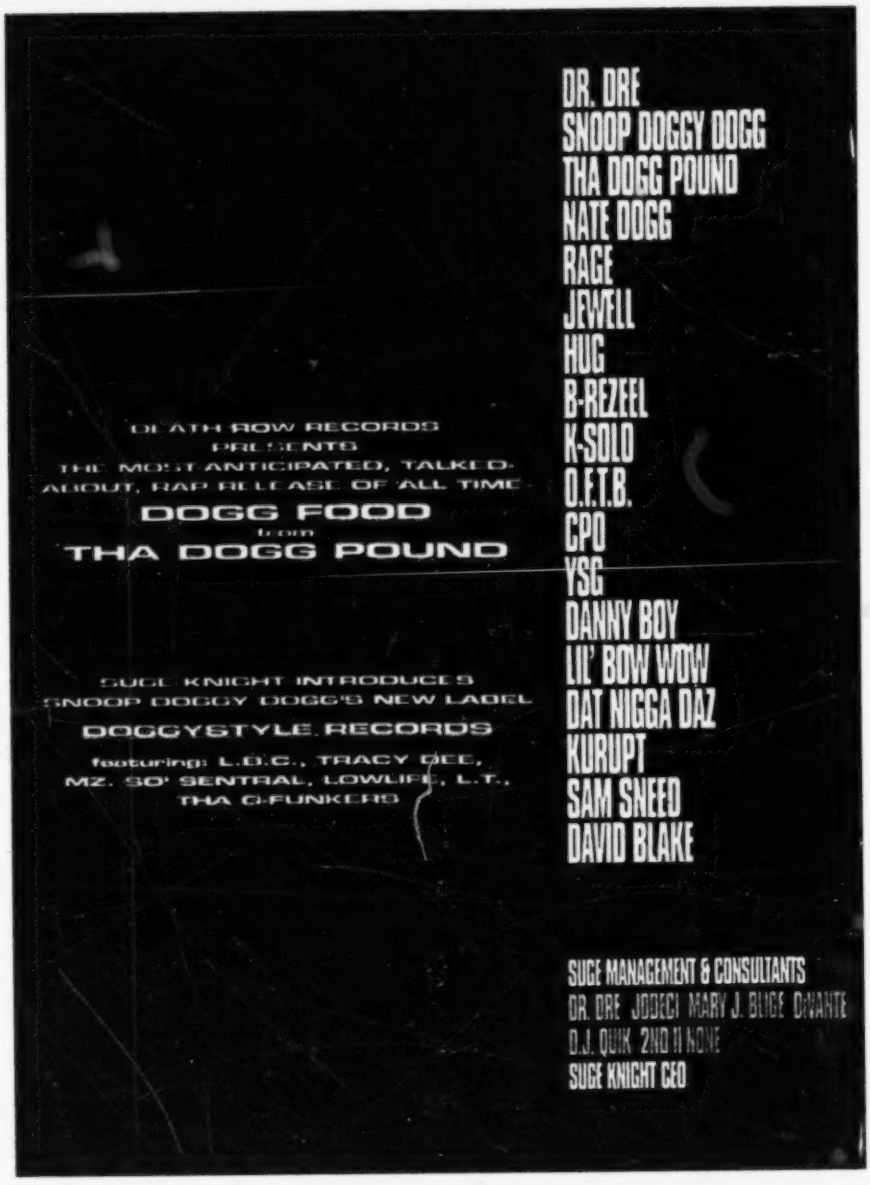
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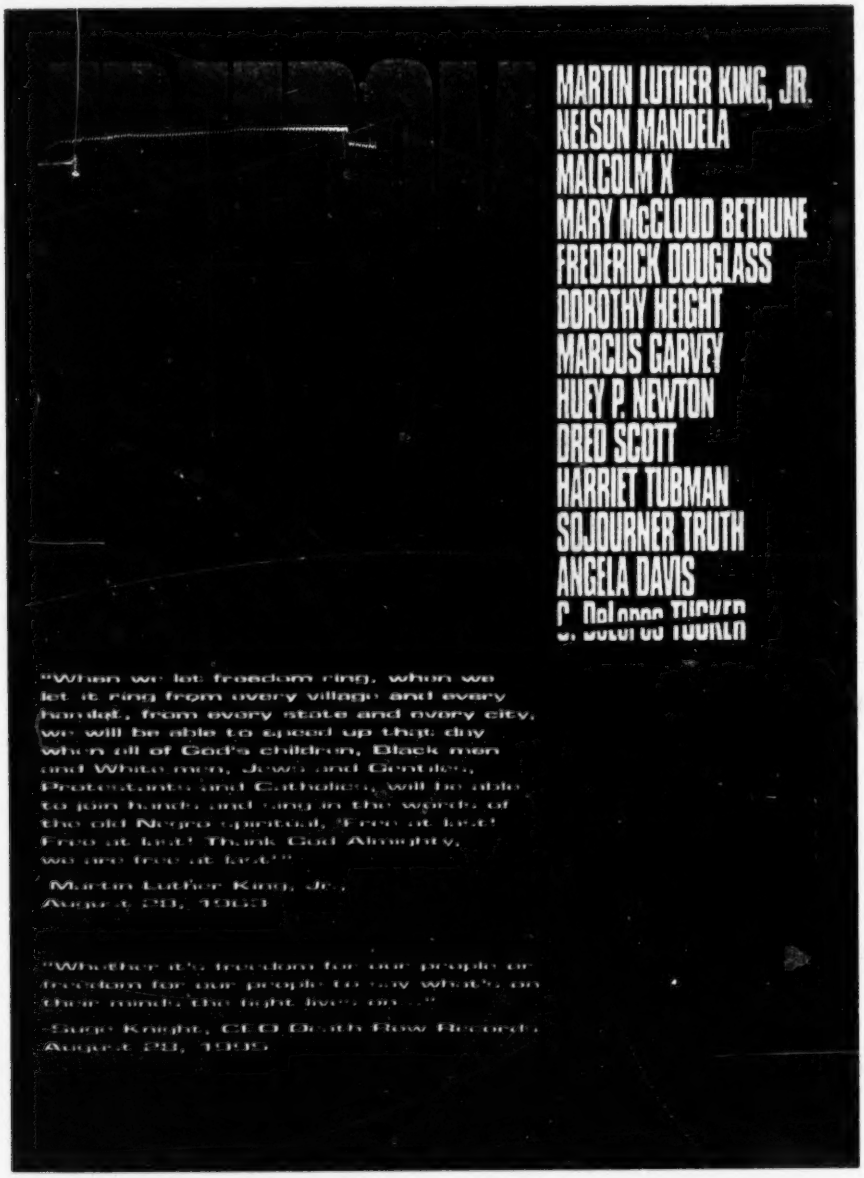
SNOOP DOGGY DOGG
THA DOGG POUND
NATE DOGG
RAGE
JEWELL
HUG
B-REZEEL
K-SOLO
O.F.T.B.
CPO
YSG
DANNY BOY
LIL' BOW WOW
DAT NIGGA DAZ
KURUPT
SAM SNEED
DAVID BLAKE
DEATH ROW RECORDS
PRESENTS
THE MOST ANTICIPATED, TALKED-
ABOUT, RAP RELEASE OF ALL TIME
DOGG FOOD
from
THA DOGG POUND
SUGE KNIGHT INTRODUCES
SNOOP DOGGY DOGG'S NEW LABEL
DOGGYSTYLE RECORDS
featuring: L.B.C., TRACY DEE,
MZ. SO' SENTRAL, LOWLIFE, L.T.,
THA G-FUNKERS
SUGE MANAGEMENT & CONSULTANTS
DR. DRE JODECI MARY J. BLIGE DWANTE
D.J. QUIK 2ND II NONE
SUGE KNIGHT CEO


MARTIN LUTHER KING, JR.
NELSON MANDELA
MALCOLM X
MARY McCLOUD BETHUNE
FREDERICK DOUGLASS
DOROTHY HEIGHT
MARCUS GARVEY
HUEY P. NEWTON
DRED SCOTT
HARRIET TUBMAN
SOJOURNER TRUTH
ANGELA DAVIS
"When we let freedom ring, when we let it ring from every village and every hamlet, from every state and every city, we will be able to speed up that day when all of God's children, Black men and White men, Jews and Gentiles, Protestants and Catholics, will be able to join hands and sing in the words of the old Negro spiritual, 'Free at last! Free at last! Thank God Almighty, we are free at last!'"
Martin Luther King, Jr.,
August 28, 1963
"Whether it's freedom for our people or freedom for our people to say what's on their minds, the fight lives on..."
-Suge Knight, CEO Death Row Records
August 28, 1995

31 July 1997

Dr. C. Delores Tucker Files $Multi-Million Suit
Against Record Producers of Gangsta Rap 'Filth'

Suit Targets Death Row, Interscope Records, Ted Field,
Time Warner, Others For Personally Defaming Her!

For Immediate Release

For Further Information, call
Chester A. Higgins, Sr. 202/387-4852

Washington, DC--
C Delores Tucker whose organization, the National Political Congress of Black Women, Inc. (NPCBW) has waged an on-going battle against the recording industry and its use of misogynous, sexist, racist and pornographic lyrics targeting the nation's children in gangsta rap music, has filed a multi-million dollar suit directed at the heart of the gangsta rap music in the US.

The suit was filed in the US District Court for the Eastern District, Philadelphia, Pa., by Angino & Rubner, a prominent law firm in Pennsylvania. Dr. Tucker's husband, William, a well known businessman, joins her as a plaintiff in the suit.

It names Tower Records, of Philadelphia, Interscope and Death Row Records, Inc., of Los Angeles California, Ted Field, an official of Interscope, the giant entertainment corporation Time Warner; the estate of the late Tupac Shakur and others, in a sweeping defamation of character litigation.

In a statement, Dr. Tucker, the NPCBW founder/chair, pointed out that "Shakur's Death Row Records, his next to last album, "All Eyez On Me," specifically defamed me in a most degrading way. It called me a personal obscenity... for fighting against this music. And I feel that those who produce, and promote this recording all over the world are equally guilty of defamation.. If I should win this suit, I will use the money to help create a healthy and vigorous climate in which our rap, hip hop and other artists can flourish and grow in healthy, productive ways and not be enslaved to this greed-driven, race driven, porno driven, grossly sexist lyrical filth that particularly defames Black women., promotes drug use, violence and panders pornography to our children."

" I am not opposed to hip hop or rap music that merely chronicles the pain, crime and degradation of some of African America's most devastated communities. Indeed, most rap and hip hop artists are highly talented and produce some of the world's most distinctive music.. But I am against the executives and publicists who administer "gangsta rap", produce and circulate it all over the world, using vile, demeaning lyrics, encouraging and abetting some of their more aggressive artists in personally defaming their critics."

BEST AVAILABLE COPY

"It is the gangstas in the suites, not those in the streets that I am after. They hide behind the First Amendment while abdicating their personal and corporate responsibility "

Acknowledging for the first time that she has received death threats during her long crusade against gangsta rap lyrics, and that some industry operatives have been prying into her private affairs "seeking dirt to demean me," she declared: "I am not unmindful of the risks to my life that I take in filing this action. However, I am even more concerned about the many, many young lives that have already been lost needlessly and the little children who will be lost if I do not say, as I am saying to this industry--"STOP NOW!"

In August, 1995, Interscope Records filed suit against Dr. Tucker in California charging her with inducement to "breach the contract between Death Row and Interscope Records." She vigorously denied the charge and asserted Interscope brought the charges in an attempt "shut me up and force me to discontinue " NPCBW's crusade against the industry's offensive gangsta rap lyrics.

She said since the suit was filed, she has been subjected to hours of depositions, suffered, surveillance and intimidation, emotional stress, received death threats, causing her "reasonable fear" for her life because violence and death play a central role in the gangsta rap arena, noting that two prominent murders have been reported since the unsolved murder in September 1996 of Tupac Shakur, all of which adversely affects her ability to travel freely without fear..

Dr. Tucker is former Secretary of State of the Commonwealth of Pennsylvania, a first at that time for a woman and a Black, and a former chair of the Democratic National Committee Black Caucus. She is a Board member of the NAACP, and the president of the Bethune DuBois Institute.

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1 MAY 1998

MEDIA FAX NUMBERS

DISTRICT	
AFRICAN-AMERICAN	
Afro-American	202/ 939-7461
CAPITOL SPOTLIGHT	745-7860
PRINCE GEORGES POST	301/627-8147
NNPA	588-5029
THE METRO HERALD	540/587-4230
WASHINGTON INFORMER	574-3785
WASHINGTON SUN	882-9817
WASHINGTON NEW OBSERVER	232-1711
JET MAGAZINE	638-4753
NEW YORK AMSTERDAM NEWS	212/ 222-3842
WOL (RADIO)	410/752-2252
PHILA. NEW OBSERVER	215/665-8514
PALM BEACH GAZETTE	561/844-5551
MICHIGAN CHRONICLE	313/963-8788
LEE BAILEY COMMUNICATIONS	213/969-8474

WHITE MEDIA (District)

JUL-19-98 SUN 11:38 CHESTER A. HIGGINS, SR. FAX NO. 2023867095 P. 06

AP	776-9570
UPI	301-577-3689
C-SPAN	737-3323
CNN	898-7565
KNIGHT RIDDER	628-4142
USA TODAY	703/558-3935 or 276-65 85
NEW YORK TIMES (local)	862-0340
WASHINGTON POST	334-4475
WASHINGTON TIMES	529-2471
REUTERS	898-8383
US NEWS & WORLD REPORT	955-2049

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19 July 1998

P.S. This is the FAX List I always use. I merely sent Dr. Tucker another copy of it on the above date.

- Chester

681ST STORY of Level 1 printed in FULL format.

Copyright 1997 Times Mirror Company
Los Angeles Times

August 1, 1997, Friday, Home Edition

SECTION: Business; Part D; Page 1; Financial Desk

LENGTH: 541 words

HEADLINE: COMPANY TOWN;
RAP CRITIC SUES SHAKUR'S ESTATE FOR DEFAMATION

BYLINE: CHUCK PHILIPS, TIMES STAFF WRITER

BODY:

C. DeLores Tucker, who built a national reputation criticizing the violent and lewd lyrics of gangsta rap, has found a new and personal objection to rap lyrics.

Tucker, in a lawsuit filed this week in Philadelphia federal court, contends that Tupac Shakur's estate should pay her $ 10 million because lyrics on a 1996 album made derogatory references to her. Among other things, the lawsuit says, the anguish caused by those lyrics cut down on her sex life with her husband.

According to the lawsuit, defamatory lyrics contained on Shakur's "All Eyes on Me"--a double CD that has sold nearly 5 million copies--have caused Tucker to undergo "great humiliation, mental pain and suffering." The lawsuit contends that Tucker's injuries have caused her husband, William, to "suffer a loss of advice, companionship and consortium."

Tucker, who became a national figure three years ago because of her outspoken criticism of rap music, could not be reached for comment. Neither could Afeni Shakur, who is named as a defendant in the lawsuit as administrator of her son's estate.

Richard Fischbein, a New York attorney who is co-administrator of the estate, said he is baffled by the allegations.

"It's hard for me to conceive how these lyrics could destroy her sex life," Fischbein said. "But we can only wait for the proof to be revealed in court."

In addition to Afeni Shakur, the lawsuit names Death Row Records, Interscope Records, Time Warner, Seagram Co., Tower Records and seven other individuals and entities as defendants.

The lawsuit accuses Shakur's estate and the others of slander, infliction of emotional distress and invasion of privacy.

According to the lawsuit, Tucker and her husband take particular offense to "lewd" and "indecent" references to her in two songs entitled "Wonda Why They

Los Angeles Times, August 1, 1997

Call U Bytch" and "How Do U Want It." In a song that the lawsuit says alludes to prostitution, Shakur's lyrics state: "Got your legs up trying to get rich. Keep your head up and your legs closed, dear Ms. C. DeLores Tucker."

Tucker, head of the Washington-based National Political Congress of Black Women, is described in the lawsuit as a "moral and religious daughter of a well-known, respected Philadelphia minister."

Tucker and former U.S. drug policy advisor William Bennett launched an anti-rap campaign in 1994 that pressured Time Warner to dump Interscope, the Westwood company that distributes such Death Row artists as Shakur, who was murdered in September, and Snoop Doggy Dogg.

The two rap critics have also criticised Seagram-owned Universal, Bertelsmann, Sony Corp., Thorn-EMI Music and PolyGram for releasing "pornographic smut" music.

Tucker, whose credibility has been challenged by accusations that she once profited from ownership of slum properties in Philadelphia, has been entangled in a legal battle with Death Row and Interscope for the last two years.

Civil lawsuits filed in August 1995 by Death Row and Interscope accused Tucker of contractual interference and suggested she had an economic motive for criticizing rap.

Tucker's lawsuit contends that Shakur's lyrics have "held her up as an object of scorn to more than 5 million people, including children in Philadelphia and elsewhere."

LANGUAGE: English

LOAD-DATE: January 29, 1998

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617TH STORY of Level 1 printed in FULL format.

Copyright 1997 Daily News, L.P.
Daily News (New York)

August 05, 1997, Tuesday

SECTION: Gossip; Pg. 14

LENGTH: 991 words

HEADLINE: STREISAND WON'T BE MARCHING DOWN THAT ISLE

BYLINE: BY GEORGE RUSH AND JOANNA MOLLOY

BODY:
So much for Barbra Streisand's Saturday wedding. As you know, the rumored location of the diva's rumored wedding had moved from Malibu to Block Island, off Rhode Island. Word was that Streisand and beau James Brolin had reserved a lot of rooms at a hotel even though the hotel denied the wedding party's name was Streisand.

But now comes word on the Internet's Drudge Report that Streisand's pals, Bill and Hillary Clinton, had plans to visit Block Island on that very date. The White House confirms that the First Couple had talked about stopping at Block Island on Aug. 9 on the way to their Martha's Vineyard vacation. A Clinton spokesman tells us they've postponed the stop till Aug. 17. The spokesman couldn't say why they were visiting Block Island, but added, "I haven't heard anything about them attending any weddings."

A source close to Streisand says that she and Brolin do plan to wed, but "not any time in the near future."

RAP'S COURT RECORDS

Sure, it has produced some searing portraits of ghetto life. But the most enduring legacy of hip hop may turn out to be the pile of litigation it has generated. Here's a sampling of the def, dope and phat lawsuits now being played out in court:

Gangsta-rap foe C. DeLores Tucker filed suit last week in Philadelphia against the estate of Tupac Shakur. The activist, who's seeking $ 10 million, claims the slain rapper defamed her on his album "All Eyez on Me." She also claims his songs one of which said she had "her legs up trying to get rich" traumatized her to the point of ruining her sex life with her husband.

Tucker may have to get in line. William Garland, Shakur's biological father, wants half of his son's estate, which is estimated at more than $ 20 million. The case went to trial yesterday in L.A. Lawyers for Tupac's mother, Afeni, argued that Garland is an opportunist who disappeared from his son's life until he saw there was money to be made.

Then there's Jacquelyn McSealey, the woman who was shot and paralyzed at an Arkansas nightclub where Shakur played in 1993. McSealey sued Shakur's estate

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Daily News (New York) August 05, 1997, Tuesday

and won $ 16.6 million. Lawyers for the estate are due to file an appeal tomorrow.

In addition, the managers of platinum-selling R & B group Dru Hill have sued Island Records in Washington, D.C. They want to dissolve Dru Hill's contract with Island. The band itself is already trying to break the deal here in federal court. They've charged that an Island Black Music exec and his bodyguard beat up a lawyer and manager for Dru Hill at an Atlanta nightclub. An Island spokesman calls the allegations "outrageous, attention-seeking and completely untrue" and notes that a state judge in Georgia refused to issue an arrest warrant for Island Black Music President Hiriam Hicks and his brother, Josh, who have been implicated in the incident. A spokesman for Atlanta prosecutors says, however, that the charges are still under investigation.

RULES OF THE GAME

The city's Parks Department has managed to crush an event that would benefit kids, street-basketball players and women film makers at the same time.

The makers of "Soul in the Hole," a documentary about the unbeatable Kenny's Kings Brooklyn hoops team shooting their way to victory, wanted to celebrate the release of the movie this week with a game.

Kenny's Kings were going to play an all-star team featuring top NYU scorer Charles Jones.

They set the game for Houston St. and Sixth Ave.

Parks Dept. officials demanded producers get a million-dollar insurance policy. They did.

Parks Dept. officials also demanded they open the guest list of 300 to include the public. They did.

Parks Dept. officials demanded that the organizers arrange security for the crowd the rap performers might attract. They did.

Struggling producer and director Lillibet Foster and Danielle Gardner say the Parks Dept. gave the verbal go-ahead early in July but on Friday, Special Events director Deborah DeGregorio backed out.

DeGregorio wrote that the basketball game "is not appropriate for the site" a basketball court. Huh?

"They weren't upfront with us about the over-the-top nature of the event," said Parks Dept. spokesman Craig Kmiecsko. "They planned on music acts that would draw 3,000 to 4,000 people."

Foster mourned, "It would've been a great thing for the kids." "Soul in the Hole" opens Friday at the Village East.

ITEMIZING

Developer Lev Rudin took sick at a business breakfast yesterday. The

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Daily News (New York) August 05, 1997, Tuesday

78-year-old New York booster was shushed out by a doctor. "He's fine," said his aide, Lori Barclay . . .

Fresh hell for rogue trader Nick Leeson. The fallen financier, who is serving six and half years in a Singapore prison for his role in the 1995 crash of Barings Bank, is reportedly about to get hit with divorce papers. Lisa Leeson, 29, stood by her husband through his trial. But the London-based Lisa hasn't visited him since early last year about the time that Nick admitted in his autobiography that he did more than his share of tomcattin' during their six-year marriage . . .

Mira Sorvino, Nicole Kidman and Madonna are all scrambling for the rights to Douglas Carter Beane's "As Bees in Honey Drown," Mr. Showbiz reports . . .There is life after Madonna: Carlos Leon is about to star in "Chacho" with John Leguizamo. . . .

The birthday party was for Lynn Hirschberg, the reporter whose New York Times Magazine piece on Jamie Tarses may still get the ABC exec fired. But she could blame comedian Conan O'Brien, designer Helmut Lang, Miramax chief Harvey Weinstein and media-exec Peter Kaplan, Adam Moss and Philip Weiss if they took their eyes off the guest of honor? That's what you get when you invite Julia Roberts. The Thursday bash, at the home of publishing heir Jonathan Newhouse, also had plenty of chilled champagne courtesy of David Letterman, who may want to stay in Hirschberg's good graces.

Notes: http://www.nextnewyork.com

GRAPHIC: THIS ZINGERMAN DAVID ALLEN COMBS ANNAK H. RAHJI GINNE SCHE SKIN: Skin-care billionaire Ronald Perelman veiled on the skins (above) and pressed the flesh of Theresa Hicks (left) at a party to benefit Southampton Hospital Saturday night. (Perelman's spokesman denies talk that Hicks is his latest blond love interest.) Earlier that day, Cindy Crawford and Rande Gerber (above, r.) tried out the family thing with Gerber's niece Chase at Bridgehampton Polo. And Jerry Seinfeld's ex-girlfriend Shoshanna Lonstein played bloob that pass with new boyfriend Jay Aaron (r.) at Jet East.

LOAD-DATE: August 06, 1997

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Appendix

444TH STORY of Level 1 printed in FULL format.

Copyright 1997 Gannett Company, Inc.
USA TODAY

August 4, 1997, Monday, FINAL EDITION

SECTION: LIFE; Pg. 3D

LENGTH: 231 words

HEADLINE: Lawsuits go after Shakur estate

BYLINE: Arlene Vigoda

BODY:
The estate of gangsta rapper Tupac Shakur is under attack.

Anti-gangsta rap activist C. DeLores Tucker filed suit in Philadelphia last week, asking for $ 10 million from the slain rapper's estate. She claims two songs on his album All Eyes on Me made derogatory references to her. Tucker alleges that the anguish caused by Shakur's lyrics diminished her sex life with her husband. In one song the lyrics say, "Got your legs up trying to get rich. Keep your head up and your legs closed, dear Ms. C. DeLores Tucker."

Also, William Garland, Shakur's biological father, is suing for half of his son's estate, estimated at more than $ 20 million. That case will go to trial today in L.A.

"It's ridiculous," says attorney Richard Fischbein, co-administrator of the estate. "Even though he was a nonexistent, deadbeat dad, he thinks he's entitled to collect money."

And a woman who was shot and paralyzed at a Arkansas club where Shakur was performing sued and won a judgment against the estate for $ 14.4 million. Shakur's lawyers plan to file an appeal Wednesday.

Says Fischbein: "Afeni (Shakur's mother and administrator of the estate) will not settle. She'd rather fight and lose than pay one cent to any of these pirates."

Shakur was shot as he rode in a car near the Las Vegas Strip Sept. 7. He died six days later at a local hospital.

GRAPHIC: PHOTO, B/W, AP

LANGUAGE: ENGLISH

LOAD-DATE: August 04, 1997

114a
Appendix

453RD STORY of Level 1 printed in FULL format.

Copyright 1997 The Baltimore Sun Company
The Baltimore Sun

August 2, 1997, Saturday, FINAL EDITION

SECTION: FEATURES, Pg. 2D, People And Places

LENGTH: 594 words

HEADLINE: Foe of gangsta rap claims it undermined her conjugal relations

SOURCE: From wire reports

BODY:
One of America's most outspoken foes of gangsta rap says Tupac Shakur's crude lyrics about her have wrecked her sex life.

C. DeLores Tucker sued Shakur's estate for $ 10 million this week in federal court in Philadelphia, saying the slain rapper's 1996 double CD "All Eyes on Me" caused her "great humiliation, mental pain and suffering."

She said the anguish caused by Shakur's sexual references to her have undermined her sex life with her husband.

Richard Fischbein, co-administrator of Shakur's estate, said, "It's hard for me to conceive how these lyrics could destroy her sex life."

'Friends' can cost you, a network learns

"Friends" will be there for NBC -- but it will cost the network nearly $ 4 million per episode, sources say.

The network confirmed that it has negotiated a deal with Warner Bros. TV to secure broadcast rights to the show through season No. 6, or 1999-2000. The current contract would have run out at the end of this coming season.

Meanwhile, creator-producers Marta Kauffman, Kevin Bright and David Crane are said to be on board for the show's six-year duration through their lucrative deals with WBTV and NBC, though they are now dividing their time between "Friends" and their new NBC sitcom, "Veronica's Closet."

John F. Kennedy Jr. throws aviation fans for a loop

People at an aircraft convention were flying high after John F. Kennedy Jr. dropped in.

Kennedy, a self-described "lapsed pilot," toured the Experimental Aircraft Association Fly-In Convention Thursday in Oshkosh, Wis., drawing more attention than the antique planes and daredevil acrobats in flight.

"It's like a dream come true," said a gasping Jean Jovaag, 69, who met Kennedy's father 37 years ago.

The Baltimore Sun, August 2, 1997

Kennedy, 36, said he's long been fascinated with flying. "Must have been all those helicopters landing on the front lawn," he said of his boyhood in the White House.

Japan's oldest twins celebrate their 105th year

Japan's oldest twin sisters turned 105 yesterday, receiving rides through a forest on covered litters and helping volunteers plant trees in the mountains west of Tokyo for their birthday party.

Kin Narita and Gin Kanie -- affectionately known as "Kin-san and Gin-san" -- released gold and silver carp into a lake. Their names sound like "gold" and "silver" in Japanese, and carp are national symbols of strength and perseverance.

In a brief appearance before 1,500 people, the sharp-witted seniors sang and answered questions, including one from a young girl about their love lives. The sisters, both single, said neither had a crush on anyone at the moment.

Roger Corman hijacks plot of 'Air Force One'

Just when you thought the skies were safe after Harrison Ford took them over last weekend, here comes Roger Corman's "Vatican Air Two."

Hearing about the plot of "Air Force One," the legendary producer-director immediately ordered writer Craig Hovius to script a parody in which a muscular pope, once a martial arts champ at the seminary, pulverizes terrorists who hijack his private jet.

"If I get a big star and co-financing, I'll spend around $ 4 million," Corman said. "If not, I'll get a good comedian and make it for around $ 2 million. Either way, I'm going to make this movie."

Today's birthdays

Actor Carroll O'Connor is 73. Actor Peter O'Toole is 65. Movie director Wes Craven is 58. Actress Joanna Cassidy is 53. Actress Kathryn Harrold is 47. Actress Victoria Jackson is 38. Actress Cynthia Stevenson is 36. Actress Mary-Louise Parker is 33. Actor Edward Furlong is 30.

King-sized

GRAPHIC: PHOTO, Artist Benn Zaricor of Atlanta puts finishing touches on his vinyl work at the Memphis College of Art to mark the 20th anniversary of Elvis' Aug. 16 death.

TYPE: CATCH LINE

Pub Date: 8/02/97 COLOR

LOAD-DATE: August 5, 1997

Citation 8/2/97 WASHPOST C03 8/2/97 Wash. Post C03 1997 WL 11977035
Rank(R) R 247 OF 396
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The Washington Post
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Saturday, August 2, 1997

Style

Names & Faces
Compiled from staff and wire reports by Dana Hull

Not-in-the-Hood Music?

Activist C. DeLores Tucker, head of the National Political Congress of Black Women, has sued the estate of slain rap artist Tupac Shakur, saying his lyrics slandered her and damaged her relationship with her husband of more than 40 years, William Tucker.

Tucker and former U.S. drug policy director William Bennett campaigned to stop the distribution of violent and graphic "gangsta" rap and rock lyrics. She sued Shakur's estate for $10 million earlier this week in Philadelphia, claiming that Shakur's 1996 CD "All Eyez on Me," which contains derogatory and sexual references to her, caused her "great humiliation, mental pain, and suffering" and contributed to loss of her husband's "[illegible]."

"[illegible]" to conceal how these lyrics could destroy her sex life," said Richard Fischbein, an attorney who oversees Shakur's estate.

Bye-Bye, 'B&B'

Beavis and Butt-head, MTV's animated teenagers, have been given the ax.

The last original episode of "B&B" is scheduled to air Oct. 10. MTV and the cartoon's creator, Mike Judge, agreed to call it quits after a four-year run.

"We've always had a great relationship with Mike Judge, but after 230 episodes, we decided it was time to move on," said MTV spokeswoman Sheryl Jones.

O.J. Loses the Piano

O.J. Simpson's piano was hauled out of his home in Los Angeles yesterday. Fred Goldman had the $20,000 Yamaha grand collected as part of the effort to satisfy the $33.5 million judgment against Simpson in

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(Publication page references are not available for this document.)
the 1994 deaths of Goldman's son, Ron, and Nicole Brown Simpson.

Goldman is also trying to get a $40,000 Ford Expedition that was presented to Simpson last month in honor of his 50th birthday. A hearing is scheduled for next week on who will get to keep the two items.

Simpson said the piano was a gift to his mother, Eunice, and that she plays it when she visits his home.

"I haven't fought them about anything that belongs to me, but this belongs to my mother," Simpson said.

Although Simpson was acquitted of criminal murder charges, a civil trial earlier this year found him liable for the two deaths.

Randall's Flea

Philadelphia Mayor Ed Randall was the big attraction at a rally Thursday sponsored by the National Association to Advance Fat Acceptance (NAAFA). Randall told the crowd that on his last visit to a local movie theater he discovered that the seats were too small.

"I thought, 'Wouldn't it be a great idea to have large seats to accommodate everyone?' "

Members of NAAFA, formed in 1969, don't believe in dieting and focus on making sure that overweight people have equal rights.

"What you are fighting against is as discriminatory as anything else," Randall said. "The hurt, the prejudice and discrimination that you face is every bit as real."

Here's Looking at Him

The Humphrey Bogart 32-cent postage stamp was unveiled this week in Los Angeles. Actress Lauren Bacall, Bogart's widow, presided over the Hollywood Boulevard ceremony.

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

CAPTION: Mike Judge, above, wrapping up; Simpson's piano, rolling out.

---- INDEX REFERENCES ----

KEY WORDS: FUN & GAMES

EDITION: FINAL

Word Count: 492

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Citation | Rank(R) | Database | Mode
9/1/97 JETMAG 62 | R 194 OF 396 | ALLNEWS | Page
9/1/97 Jet 62
1997 WL 9173794
(Publication page references are not available for this document.)
Jet

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Monday, September 1, 1997

Vol. 92, No. 15, ISSN: 0021-5996

C. Delores Tucker files $10 million lawsuit against Tupac Shakur's estate.

Dr. C. Delores Tucker, an outspoken critic of gangsta rap, has filed a $10 million lawsuit against the estate of the late rapper Tupac Shakur charging that he made derogatory comments about her in his music.

Dr. Tucker, chair of the National Political Congress of Black Women Inc., says songs on Shakur's hit album All Eyez On Me have caused her "mental pain, suffering and inconvenience."

The suit also notes because of Shakur's music, Dr. Tucker has "suffered severe emotional distress including, but not limited to, feelings of fright,, shock, humiliation and outrage."

On the tune Wonda Why They Call U B------h Shakur raps: "Get your legs up trying to get rich. Keep your head up and your legs closed Dear Ms. Delores Tucker." Dr. Tucker states in the suit that the lyrics allude "to prostitution and tells why women are called bitches."

On the tune How Do You Want It Shakur raps: "C. Delores Tucker .... instead of trying to help a brother you destroy a nigga."

The suit filed jointly by Dr. Tucker and her husband, businessman William Tucker, states that Mr. Tucker "as a result of his wife's injuries, suffered a loss of advice, companionship and consortium."

The suit, which alleges intentional infliction of emotional distress, slander and invasion of privacy, was filed in the U.S. District Court for the Eastern District, Pennsylvania. It also names Tower Records of Philadelphia; Interscope and Death Row Records of Los Angeles; Ted Field and James Iovine, officials of Interscope, Time Warner, Seagram Co., MCA Inc. and others.

Dr. Tucker said in a press statement that Shakur's album All Eyez On Me, released in 1996, "specifically defamed me in a most degrading way. It called me a personal obscenity ... for fighting against this music. And I feel that those who produce and promote this recording all over the world are equally guilty of defamation."

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(Publication page references are not available for this document.)
She added, "Not only have I been defamed, I feel thousands of young women have been defamed by this greed-driven, race-driven and drug-driven music. This sexist lyrical filth particularly defames Black women, promotes drug use, violence and panders pornography to children," she stated.

Shakur was killed in a drive-by shooting in Las Vegas last year (Jet, Sept. 30, 1996).

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

photograph illustration

---- INDEX REFERENCES ----

NAMED PERSON: C. DELORES TUCKER

KEY WORDS: RAP SINGERS

Word Count: 373
9/1/97 JETMAG 62
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The Philadelphia Tribune

Tucker: Media distorts lawsuit

Husband defends wife's complaint

By Bennet Wright
and Dwayne Anderson
Tribune Staff

The husband of C. DeLores Tucker said yesterday that the record industry and media have distorted a multi-million-dollar lawsuit discussed at the heart of the gangsta rap crusade in the U.S.

Well-known businessman William Tucker [illegible] his wife at a plaintiff in [illegible] Philadelphia [illegible] Court, seeking the return of Tupac Shakur and others in a sweeping defense of Constitutional liberties, alleging [illegible] infraction of unrelated diseases, slander and invasion of privacy.

The Tuckers are asking for $10 million in the suit.

"It is the gangsta in the suits, not those in the streets that I am after," C. DeLores Tucker said. "Only idiots behind the First Amendment while defending their personal and corporate responsibility."

She left a Philadelphia area hospital yesterday and is recovering from exhaustion and dehydration caused by a recent rally in South Africa. Her husband checked her out of the hospital and said she is "fine" and on her way back to Washington.

According to the lawsuit filed last week, Shakur's "All Eyez on Me" — a 1996 double CD that sold nearly four million copies — caused C. DeLores Tucker "great humiliation, mental pain and suffering." It also said the injuries

(Continued on Page 9-A)

C. DeLores Tucker's husband defends her

(Continued from Page 1-A)

named her husband, William, in "suffer a host of ailments, sleeplessness and emotional distress."

The premise of the lawsuit was widely reported, and widely misinterpreted, according to William Tucker.

"The way the media distorted this is ridiculous," he said during a telephone interview with the Tribune yesterday. "My wife has never spoken to anyone in the media about our private or personal life but that's the way they tried to project the story."

He said the suit was filed nearly two weeks ago and "someone in the record industry" phoned up on the suit and put their own version on the thing.

"This lawsuit is not about Tupac or his estate," said William Tucker. "We had to include him. He is the one who dedicated her. This is not about my personal life or me. It's about holding the record industry accountable and responsible for their conduct and for their practices and their policies toward Black people.

"The focus of the lawsuit is homicide, sexual crimes, harassment and intimidation. That's what the lawsuit is all about," he said. "All the other nonsense they have tried to project is fiction."

William Tucker said he did not mind being included in the lawsuit because "anyone anyone murdered my wife, it affects and harms me personally."

Pointedly asked how the Tuckers could afford his son Bill, he said, "That's just a total unknown [to the lawsuit] — a small part of it. We have to represent the situation as accurately as we can and the only way to experience it is to have it happen to you."

Helen Little, the operations manager and a D.J. at Power 99, said she hopes the suit doesn't create long-term problems for the Tuckers.

"Whatever the outcomes of the suit, I am sure it will be very interesting, I won't say how a parent's name in a song would affect your own life since I have never had my name mentioned in a song," said Little.

Jerry Wells, long time D.J., production and creative manager for WDAS FM/AM stations, said he doesn't think "censorship" young artists in the suburbs.

"I thought this was some sort of slander thing, but I know what song that they are talking about. But I wasn't aware that they are making changes. The older generation has to understand that the music they consider insulting, the same the younger generation embraces it," he said.

Daryl Trent, general manager of WPHI 103.9 FM, added that, "Mr. Tucker has a right to do what is necessary if the facts her name is being slandered. When you lawsuit city type of attack on a person publicly, then person has the right and responsibility to redress that attack."

The suit named Tower Records of Philadelphia, Interscope and Death Row Records Inc. of Los Angeles, Ted Field and James Iovine, officials of Interscope, entertainment attorney Jeffrey Weinberg, Seagrams Co. and MCA Inc.

C. DeLores Tucker's Harrisburg attorney Mahlon C. Angley did not return calls yesterday.

Richard Fredricks, a New York attorney who is co-administrator of Shakur's estate, said he was baffled by the suit.

"It's hard for me to associate how these ideas could destroy her son's life," Fredricks said. "But we can only wait for proof to be presented in court."

C. DeLores Tucker, the founder of the National Political Congress of Black Women Inc. (NPCBW), which has waged an on-going battle against the recording industry and what she has called subliminal, crude, racist and pornographic lyrics targeting the nation's children in gangsta rap records, earlier filed a multi-million-dollar suit directed at the heart of the gangsta rap crusade.

Two of the defendants, Interscope Records and Death Row Records Inc., filed countersuits of their own against Tucker, charging her with defamation in lawsuits she announced between Death Row and Interscope.

In their suit filed last week, the Tuckers claimed Interscope and Death Row Records knew the kid drama on each thing, and that they filed over records only to drive her record against gangsta rap records.

C. DeLores Tucker said since the NPCBW suit was filed, she has been subjected to hours of depositions, unlisted surveillance and intimidation, murdered crime, murdered death threats, causing her "irreversible fear" for her life because violence and death play a central role in the gangsta rap crime.

She noted that two prominent enemies have been reported since the murdered murder in September 1996 of Tupac Shakur, all of which adversely affects her ability to travel freely without fear.

In a statement, C. DeLores Tucker pointed out that "Shakur's Death Row Records, next to the last album, 'All Eyez on Me,' specifically delivered me in a most degrading way. It called me a personal adversary ... for fighting against the crude. And I feel that those who produce, and promote this crumbling all over the world are equally guilty of defamation. Not only have I been defamed, I feel thousands of young women have been defamed by the greed-driven, mercenary and degradation made. This order [plus] [illegible] that particularly defames Black women, promotes drug use, violence and promotes pornography to children."

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SOME VERY DECENT KIDS DIG TRASH RAP
Philadelphia Daily News
(DN)
- Wednesday, August 6, 1997
By: Elmer Smith

Edition: PM
Section: LOCAL
Page: 11
Word Count: 844

TEXT:
It was billed as a showdown between hip-hop icon KRS-One and Anti-gangsta rap crusader C. DeLores Tucker. But the wiley Mrs. Tucker had a better idea.

At least it seemed like a better idea at the time. She'd challenge one of the scores of teens in the audience to come up on stage and read the lyrics of one of Lil Kim's trashiest raps without stumbling over any obscenities. Her $20 wager seemed like a good bet considering her audience at the NAACP convention last month in Pittsburgh. You couldn't find a more clean-cut bunch of young people at a Sunday school picnic. But her bet almost set off a stampede. Jermair Stroud, 17 of Richmond, Va., outsprinted two other teens to reach the dais first. Stroud, reading from a transcript, showed little embarrassment at first, even sandwiched between Tucker, who stood right behind him, and an audience that included some appalled adults.

Finally, he got to a passage that stopped him in mid-sentence. But it didn't stop dozens of kids in the audience who began to chant along with Stroud without reading from a script. Lil Kim's lyrics were far filthier than the trash we used to talk when I was in the Army, replete with passages glorifying oral and anal sex for fun or profit, and advocating the use of drugs during sex. No Time'' by Lil Kim and Call Me'' by Lil Kim & Too Short feature lyrics urging young girls to do anything you can think of'' with any man who wants it, as long as you get paid or it feels good. Parents who say they don't mind their daughters hearing this stuff or being characterized in this way probably haven't stopped long enough to listen. I'll gladly send a copy of the lyrics I got off the Internet to any parent who doesn't believe me. But C. DeLores Tucker lost her bet in Pittsburgh because these teens, as decent as they were, literally thought nothing of it. And that's where the danger lies.

The thoughtless repetition of this kind of filth can have a subtle effect on the most decent kids because it tells them that anything that makes you feel good or you can get paid for is OK. Decent kids may never do what these lyrics advocate. But it's hard to believe impressionable young people can repeatedly mouth these mantras without it affecting their sexual outlook.

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I happen to like most rap. And I am not for banning anything, not even Lil Kim's degrading garbage or the more offensive glorification of violence by a relatively few hard-core gangsta rappers. But as long as seemingly respectable firms like Seagrams and Sony pocket the profits, I support C. DeLores Tucker or little Tommy Tucker or anyone else who has the guts to stand up to them. But I also appreciate how some people felt betrayed when she filed a $10 million suit that has trivialized her and her movement. For a week now, even some of her most consistent supporters have been questioning her motives and snickering over the suit's allegation that her sex life has been ruined by a couple of Tupac Shakur raps. Bill Tucker told me his wife was too stressed out over the controversy to comment yesterday. But he had plenty to say.

"Everybody wants to focus on that, as if this is about sex or money," said Tucker. "That's the spin out of Hollywood. But it's a total distortion."

"First off the suit is not just against Tupac. It's against Seagrams and MCA and Death Row and everybody else involved in exploiting these artists. She's been at this for three years. If she was in it for money, she has had plenty of chances. Every time she meets with these big companies, the first thing they ask her is what she wants.

". . . If any money comes of it, my wife has always said she wants to do something to undo the harm this has caused, especially to the image of young black men. It's not about money. My wife hasn't had a paycheck since 1977 (when she was Pennsylvania Commonwealth secretary). But she gave $12,000 to help save the Martin Luther King Center."

On the more delicate issue of how the insults on two Tupac Shakur rap releases have affected their sex life, Tucker said, "You live through something like this, it affects everything about you.

"These raps are literally calling her a prostitute, describing her with her legs up in the air. When she's in a train station, a record store or anywhere, we see people hunch each other and point."

That may be. But I would have felt better if the suit had been filed on behalf of the movement she has helped spawn or if she had issued a statement saying what she'd do with the money. Instead the focus is back on her. And those who ignored the cause because they didn't trust her have found a convenient excuse.

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DESCRIPTORS: OPINION MUSIC

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Music News Of The World

-- Aug 11, 1997 --

Edited by Michael Goldberg

Headlines: Aug 11, 1997

- Fans Tune In As Radiohead Turns Up The Volume
- UPS Walkout Hits Music Fans Where It Hurts
- Fleming Lips Latest Experiment To Go Boom!
- ATN Album Review: Maggie Estep's Love Is A Dog From Hell
- Juliana Hatfield Labors Over More 'Mature' Work
- "Question of the Day": Phishing For Trouble?
- $10 Million Defamation Suit Targets Tupac, Rap Labels
- ATN Feature: Orbital Landing In U.S.
- R 'N' R Three Dot: Jane's Addiction Reunion LP Has A Name
- ATN Album Review: DJ Morpheus' Freezone 4
- You Say It's Your Birthday: Charlie Sexton

Headline Archives

$10 Million Defamation Suit Targets Tupac, Rap Labels

Anti-gangsta crusader claims Shakur (pictured), Interscope, Death Row and Tower Records responsible for slanderous song.

Addicted To Noise Senior Writer Gil Kaufman reports : It's not a vendetta against the late Tupac Shakur, said William Tucker. It's a battle to defend a constitutional right.

Then again, if you ask those on the other side, it's all about publicity.

"No one is allowed to go around heaping and distributing obscenities on a person. That is not a constitutional right of anyone," said William Tucker, husband of anti-gangsta rap crusader and National Political Congress of Black Women Chair Dr. C. DeLores Tucker, speaking to Addicted To Noise on Thursday.

With that in mind, Dr. C. DeLores Tucker has filed a sweeping $10 million defamation of character lawsuit in the US District Court for the Eastern District in Philadelphia against slain rapper Tupac Shakur's estate, Interscope Records, Death Row Records, music store giant Tower Records, Interscope founders Ted Field and Jimmy Iovine and Interscope's parent company on allegations of infliction of emotional distress, slander and invasion of privacy.

"This suit isn't about Tupac," said William Tucker, reacting to widespread reports that focused on the portion of the suit targeting the slain gangsta rapper's estate. A statement released by Tucker's office refers to lyrics from Shakur's 1996 double-CD *All Eyez on Me* that she said defamed her "in a most degrading way."

"People have focused on that one part of the release," her husband added, referring to charges that the alleged references to his wife on the album have put a strain on the couple's sexual relationship. "But this is about (Death Row distributor) MCA, (parent company) Seagrams and Tower Records because they peddle this filth to children."

Dr. Tucker was unavailable for comment due to a recent illness, her husband said.

In the song "Wonda Why They Call U Bytch," Shakur raps, "Got your legs up trying to get rich/ Keep your head up and your legs closed/ Dear Ms. C. DeLores Tucker" as well as similarly explicit lyrics in the song "How Do U Want It."

Richard Fischbein, legal counsel for the Shakur estate, told the *Los Angeles Times* last week, "It's hard for me to conceive how these lyrics could destroy her sex life. But we can only wait for the proof to be revealed in court."

Tucker, along with former U.S. Education Secretary William Bennett, have waged war on gangsta rap for the past three years, attacking the popular style for what they say is its detrimental effect on children and its defamatory treatment of women. Death Row has been a repeated target of Tucker- and Bennett-led press conferences based on the label's self-perpetuated image as the home of gangsta rap.

"In my non-legal opinion it's an easy lawsuit to file, but to prevail would be unprecedented," said Danny Goldberg, President and soon-to-be-named chairman of Mercury Records, President of the ACLU (American Civil Liberties Union) Foundation of Southern California, and longtime advocate on behalf of free speech issues. Goldberg dismissed the suit as a publicity device. "People are entitled to their feelings about music, but when they use pressure to prevent the natural marketplace from allowing the public to say what they like, I'm against that because I think it contravenes an atmosphere where free

speech can flourish."

Goldberg said that, while suits such as Tucker's are not illegal, they are nevertheless "just wrong, which is the same way I would feel if someone tried to censor her (Tucker). That's equally wrong."

Grace Bergen, legal counsel for MTS Inc., the parent company of Tower Records said she was aware of the suit but could not elaborate on it, since MTS had not been served with papers yet. "As a retailer, we believe in free speech and people's right to it," said Bergen. "Until the court makes a judgment that these products are illegal, some people believe that seeing them on the shelf will get the controversy out there, which is the purpose of free speech."

Representatives for Death Row and Interscope could not be reached for comment.

For his part, William Tucker failed to see any irony in the filing of a multi-million dollar lawsuit seeking damages from a company that his wife has spent years battling. This suit is focused on those responsible for distributing and promoting this music around the world, Tucker argued. "Everywhere my wife goes in an airport or a restaurant," he said, "you see young kids touching each other, punching each other, turning around looking at her, sniggling. Of course she feels they're talking about [Shakur] calling her those names and referring to her as a prostitute and this has caused her a lot of humiliation and anguish."

Tucker re-iterated a quote from his wife's press statement, saying, "It's the gangstas in the suites, not the gangstas in the streets that we're after."

Additionally, the statement alleges that, since the suit was filed last month, Tucker has been subject to hours of depositions, suffered surveillance and intimidation, emotional stress, received death threats, causing her "reasonable fear" for her life "because violence and death play a central role in the gangsta rap arena." On the advice of counsel, William Tucker would not comment on those allegations.

"Here we're dealing with people who are involved in creating a culture of real violence," he said, referring to the defendants in the suit. "And two people have died already."

Shakur and fellow gangsta rapper Notorious B.I.G. (Christopher Wallace) were each gunned-down in separate but still-unsolved drive-by shootings over the past year.

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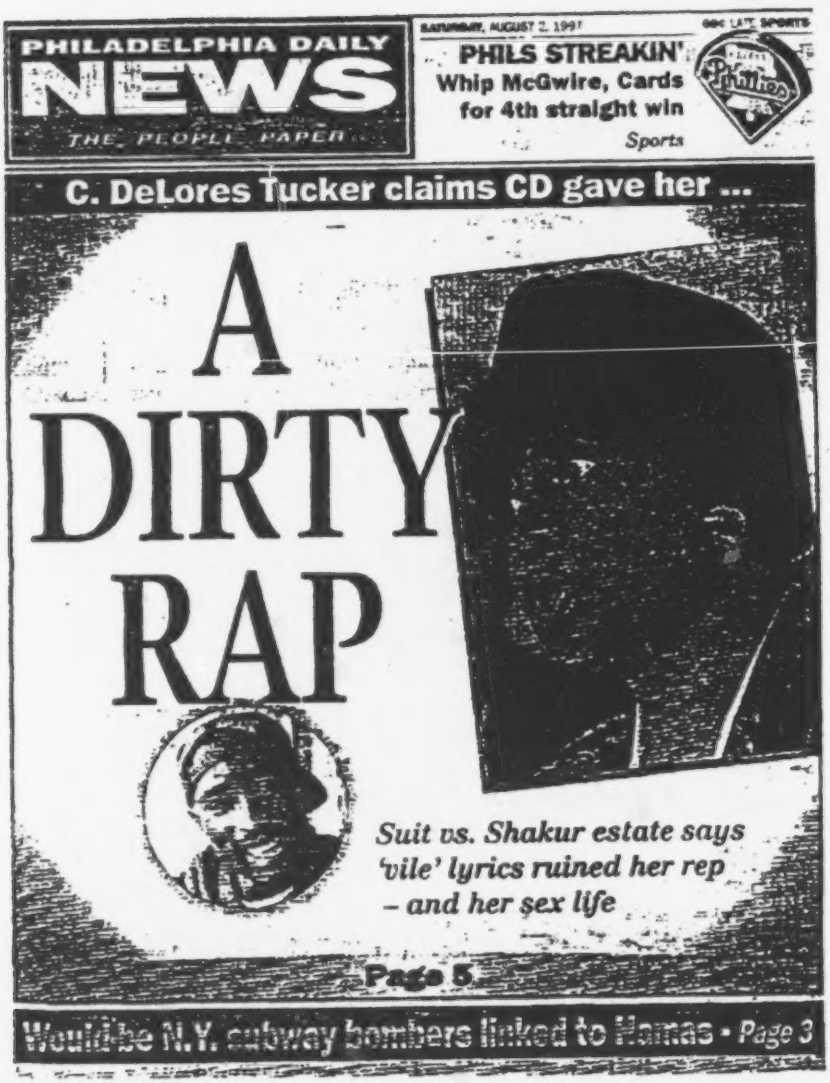
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'vile' lyrics ruined her rep
– and her sex life
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Would-be N.Y. subway bombers linked to Hamas • Page 3

Suit: Tupac dead wrong

Rights leader says rapper's strong words ruined her life

by Ismael E. Watson and Jim Smith

Daily News Staff Writers

C. DeLores Tucker has filed a $10 million lawsuit against Tupac Shakur's estate, saying some of the late rapper's lyrics caused her mental anguish and diminished her sex life.

Tucker filed the lawsuit this week in Philadelphia federal court, charging that Shakur's record-breaking 1996 CD "All Eyez on Me" caused her "great humiliation, mental pain and suffering."

"She was really called a lot of bad names," said Tucker's Harrisburg attorney, Richard C. Angino. "It was all done to intimidate her."

It also says the injuries caused her husband, William, to "suffer a loss of advice, companionship and consortium."

—Richard Pizzuto, a New York attorney who is co-administrator of Shakur's estate, said he is baffled by the suit.

"It's hard for me to conceive how these lyrics could destroy her sex life," Pizzuto said. "But we can only wait for the proof to be revealed in court."

Tucker and her husband took particular offense at the "lewd" and "indecent" references in two songs titled, "Wonda Why They Call U B—" and "How Do U Want It," the suit says.

In one song, which the suit claims alludes to prostitution, the lyrics state: "Get your legs up trying to get rich. Keep your head up and your legs closed, dear Ms. C. DeLores Tucker."

"Tupac was just one of the instruments that participated in slandering Dr. Tucker," Angino said.

He said such companies as Death Row Records, Interscope Records, Time Warner, Seagram and Tower Records — all named as defendants in the suit — are also responsible.

"These companies make billions of dollars putting out music that destroy African-Americans," Angino said.

In filing the lawsuit, Tucker said that over the years she has tried to stop the production and distribution of gangsta rap to "impressionable youth, because it tends to corrupt the morals of minors."

She contends it "contains vile, profane, obscene and indecent lyrics which glorify drugs, violence and illicit sex."

Tucker, head of the Washington-based National Political Congress of Black Women, formed an anti-rap campaign that gained widespread support from such notables as former U.S Education Secretary William Bennett; U.S. Sen. Joseph Lieberman, D-Conn.; former Republican presidential nominee Bob Dole and retired Gen. Colin Powell.

In January 1996, she began an organized protest of Tower Records in Philadelphia because the store was selling Shakur's "All Eyez on Me" to minors.

Kathleine Dlange, administrative assistant for the South Street Tower Records store, remembered when Tucker and her entourage protested outside the record store, forcing it to close briefly.

"They were reading the obscene lyrics off of the CD through a bullhorn outside of the store," Dlange recalled. "Then, they came into the store and started to throw the CDs on the ground."

The police were called and Tucker was arrested.

"I think she blew the situation out of proportion," Dlange said.

Tucker, a former secretary of state for Pennsylvania, has been harshly condemned by some black intellectuals for aligning herself with right-wing political leaders to fight gangsta rap.

Tucker's lawyer defended her tactics, saying "there is a woman who has spent her lifetime caring about her people, and now these record companies are trying to make her life miserable."

See TUCKER Page 23

Fighting Words

Here are lyrics from two of the Tupac Shakur songs to which C. DeLores Tucker objected, starting with "Wonda Why They Call U B—":

"Dear Ms. Delores Tucker
keep stressin' me
f— with a muthaf— mind
I figured you wanted to know
you know
why we call them hos b—
and maybe this might help you understand
it ain't personal
strictly business, baby
strictly business.
So if you wonder why we call U b—,
You wonder why we call U b—."

And from the song "How Do U Want It":

Delores Tucker
you's a muthaf—
instead of tryin' to help a n—
you destroy a brotha
worst than the others
Bill Clinton
Mr. Bob Dole
You too old to understand the way the game is sold
you're lame
so I gotta hit you with the high facts
won't someone listen?
makin' millions
n—, lap that
they wanna censor me
they rather see me in a cell
livin' in hell
with only a few of us to live to tell
now everybody talkin about us
I could give a f—
I'd be the first one to bomb and cuss
N—, tell me how you want it."

TUCKER

Continued from Page 5

"This is the woman who marched with Martin Luther King to fight for integration, and now she is fighting a new battle against gangsta rap."

Since the record's release, her lawyer said Tucker has received death threats and now fears for her life. She also has incurred medical expenses, suffered a loss of life's pleasures and has lost the freedom to travel freely.

"Tucker has reasonable fear for her life because violence and death play a central role in the gangsta rap arena," the lawsuit states.

Calls were placed to Interscope Records, Death Row Records, and Time Warner, but no one was available for comment. ■

The Associated Press contributed to this report.

PHILADELPHIA'S LARGEST WEEKLY ■ VOL. XXVI NO. 33 ■ AUGUST 13, 1997
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e it to Memphis to honor the King,
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courtesy of Phantom

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Media Has C. DeLores Tuckered

After filing a $10 million defamation lawsuit against Time Warner Records and the estate of murdered rap artist Tupac Shakur, anti-rap crusader C. DeLores Tucker is now complaining that the media is out to distort the facts of the lawsuit. Claiming that clever rhymes in Shakur's "All Eyez on Me" release such as "Delores Tucker, you're a mother_____" caused her "great humiliation, mental pain and suffering," Tucker included her husband, William, in the suit, claiming that he had suffered "a loss of advice, companionship and consortium." Although the *Inquirer* didn't even cover the filing of the suit, the *Daily News* trumpeted on its August 2 front page, "C. DeLores Tucker Claims CD Gave Her A Dirty Rap: Suit vs. Shakur estate says 'vile' lyrics ruined her rep and her sex life." Daily News managing editor Brian Toolan defends the paper's treatment of the story, saying that "it's generally understood that's what loss of consortium is supposed to mean in the law." But Tucker's attorney, Richard C. Angino disputes this, stating that the phrase is a standard addition to lawsuits of this type and refers to all aspects of the marital relationship, not necessarily sex. "This is why people sometimes get so upset with the media," says Angino. One disinterested personal injury attorney who wished not to be named agrees with Angino, but adds that, "Loss of consortium is a lot of nonsense. I once recovered $50,000 for an injured women, and the jury gave her husband one dollar for loss of consortium."

—N. W.

Yard Art Better Than Flamingos And Gnomes

Philadelphia artists wrote another chapter in the do-it-yourself exhibition manual this weekend, when more than 150 art-lovers visited the South Philadelphia backyard of painter Nancy Lewis and sculptor Alexander Cheves for a look at their Backyard Sculpture Invitational. Part of a growing trend in which which artists are creating their own exhibits in vacant stores, apartments and private homes, the Backyard Invitational features works by Astrid Bowlby, Nick Fox, Jim Hinz, Laura Hutton, Emily Thompson, August Ventimiglia and Cheves himself, all in a 1,000 square-foot rowhouse backyard. The site-specific works all deal with the notion of the backyard as an urban "oasis," and although the exhibit remains open through August 15, you'll have to

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870-541-0211 7960

David Mitchell--801-574-0873--Jackie McNanley --

Richard C. Angino, Esquire, atty. for C. Delores Tucker:717-236-8721, x3021

When you file a complaint. We just got time tables from Eastern District. No. of time things come up. Two trials going on. Lawsuit where Interscope and Death Row brought suit against Dr. Tucker. Just at the opening stage of my suit. I think dr. tucker is one of the most respected ladies in this areas. community, and she doesn't take light to any of this. If you look at complaint, it has all different allegations. There's one count of loss of companionship. It's ignoring the other counts. We're talking about all of this affecting tucker. If someone affects you physically, mental, etc, they've affected the family union. in most lightpoles there is... It can include sex. Its probably one of less significant aspects in relations.

11 days of deposition. a national investigative firm. gangsta background. These are the kinds of suits on the other side. music

call me. tucker and mf, and this is your wife.

NWSWK 0006

ESTATE/R DEPT: PG:

That's what called a defense tactic.

That is the kind of thing that. Bennett is on her side. sl gave's. Intends to call Ms. Gore. Strategythis was a particular situation ms. gore was interested in. dismiss warwick.

put out a record to defame her. It's all intertwined.

what I suspect is that major ons. involved here -- sangrams and thos wanner -- they know they are wrong in supporting... I dont know what will happen.

won't discuss these areas (prospect of a settlement).
If this case winds up in trial, dr. tucker has a lot of friends who reposet her in high position. Haven't talke to gore and bennett. These people would support her if I asked her too.
I would be surprised if the matter isnt up for trial for a year. Case against her in calif. has gone on for two years.
--30--

--30--

I get called probably three days after Tupac was killed. Asked me to come to Calif., shortly after he died. She and I have a long history. And I got involved immediately. She asked me to become co administrator of the estate. And I've been dealing with it since. Never been one like this. In this situation, someone who's murder. Still haven't figure out who it was, which is amazing to me. You have an estate that when I got there there was $15Ok totally, and nothing. Theoretically, there were debts we were told that ran into the millions. Basically, I remember the first day I was there, I was asked by sheri to go see Suge Knight to sit and talk to him and we went over. Then the two of us sat

NWSWK 0007

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ESTATEJR DEPT: PG:

there for 2.5 hrs waiting for him. Then finally I just said forget it. As we were walking out, he came up in the elevator. my position:you just cant deal with someone who was that unable to deal with a mother's grief, who had just lost a son. So I just pulled her out. That was the last time we ever negotiated with him, although I believe that we have just settled the Death Row case. We started a RICO case. That is basically true. As part of the whole issue. There has been this big rico case against them. That case has basically been settled.
The RICO case will give us basically everything we asked for against Death Row, Kimsey and all the rest gave us everything we wanted, which includes forgetting the 80 million they claimed we owed them. We got out. There were a lot of tupac cuts. We get those back. And they paid. Suge wanted 25% of what he made. There are no claims. No more claims.

The fact is, we negotiated this deal with Kimsey and Interscope and us. We had a big meeting. This was a negotiated agreement in which Kimsey participated. Then he had bypass surgery and was just out of it. Grimes came in. Was told he was for the settlement. Took them to get signed by Suge. What I believe is that the real documents that were signed were signed when kimsey was there. I think Kimsey was pushing and Grimes, too. There was no sense having this fight with us. Dont know that its totally taken care of. Waiting for all the money and signatures. Believe it will all be taken.

What is it worth:That is a tough questions that you ask. Unlike other estates that you could just put a value on. It is impossible to put value on future sales. There will be a series of tupac albums released. You just have to make assumptions, and there are the old records and eventually. There is a tupac documentary that we are negotiating with HBO. And there's a full movie we are in process of negotiating with marvin worth and quincy jones. The value of the estate is a guess.

In the bank, that will be reported. Estimated at 16 or 17 million. There is a future stream. We havent receive pipeline money. If you had to estimate, $25 million, but you wouldn't get from me. Could be as high as $50.

NWSWK 0008

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ESTATEJR DEPT: PG:

This was a major lawsuit that estate has taken against others. There were a series of other lawsuits that estate has taken.

1. Merchandising lawsuit whereby there were ass. selling t shirts and other things through Death Row, of which Tupac and his estate knew nothing about and was getting no money. We brought a lawsuit, we stopped them from doing that. they paid us substantial amount and were enjoyed from doing that. Have entered into a new agreement with another merchandising co.

2. Donald David will call.

The Deadbeat Dad case:

That was filed soon after he was killed. This guy said I was a deadbeat dad , but I dont care. I should get the estate. That is what this guy claims. To me, that is the most amazing claim. This case is amazing because here's a guy who admittedly never gave $700.00 in all the time that tupac was a child. Visited him two or threee times, maybe. And now after living a life in which he has scores on. of children. He had warrants out for his arrests for not paying judgements in child support cases, where he's been chased to pay for his other children and now comes along and ask for half the estate. It's amazing. But on the other side he's got nothing to lose. If stays. taking on contingent.
the guy is the biological father. There has to be a trial, and its going on. The trial has started. Some no. of days are being heard. Some more in Sept.
I dont believe there's any likelihood that he will be rewarded for his lack of interests in his son. She was part of the panther 21. When she came out of jail for a while on bail. She had relations with two men. She never knew who the real father was. She went to them. She said one can claim him, both can. This guy never came around. The other guy, tupac, always thought was his father. A fellow name Legs. Tupac always thought he was his dad. When this guy legs died, tupac thought he had lost his dad. Had kind of taken up with Marsha Shakur, whom he looked upon as his dad, she a member of the movement. Now in jail. Looked to him as guiding light. I have enough faith to know that when the story gets.

NWSWK 0009

ESTATEJR DEPT: PG:

Argumentshe's the biological father. The calif statute requiring you to be there and to support is unconstitutional. His position is that because he's the biological father, that's all. Secondly, he claims that he gave $650.00 over the course of Tupac's life, and that is enuf to deal with support issues. Also, he saw him two or three times in his life, and that's enough.

There are court papers that adjudged him a deadbeat. Passing on that issueno one should be rewarded for not taking care of their children because if that were the casethere would bds, hopefully one would make a lot of money and die and they you hit the jackpot.;
Sindded, the second phase, will be tried sometime in Sept. I think it will be over in Sept.

ARKANSAS:

The most amazing case. What happened there. At some pt., tupac went down to give a concert. before concert, shot was fired. someone was shooting at someone else, missed, hit a girl and paralyzed her. Lawsuit started against club. Everyone entertaining there that knight. Interscope, Death Row, etc. They allegedly served everybody. Got a judgement against club, $500k. They allegedly served tupac the night he was performing on Saturday night Live. Tupac never answered the summon. The claim that he was served, the affidvits of service are totally false. They talk about him being in a part of Sat. Night Live. When you are performances. Special ommunon. These guys say he was right out front. What happened:they took a default against him. he didnt put in answer. Then he was killed. Then the arkansas ct. appointed an administrator of the estate, a lawyer in arkansas, in pine bluff to be administrator. Then they served the administrator. He did nothing. There was a default taken. And they took $358 million judgement against the estate. We found out about it when I got a call from MTV News. What about this judgement. What are yuys talking about. We immediately then, understanding, how game played, hired lawyer down there. Made motion to vacate the default. They appointed a lawyer that just didnt appear. We argued it in front of the judge who did this. Judge's position, That's the way it is.
at this stage, we are up on appeal too higher court in arkansas and , if necessary, this ct. will go to s. ct.

after the judge renders decision. We get the police report. It shows that the argument was two locals, happened to walk in club, argued, took out gun and hit this woman. How any of these people, death row, tupac, interscope, get into this.

off the record the judge who rendered the decision is running for judge in that small community, and I think he is running now. That is a hell of a way.

C. Dolores Tucker -- we just got served the other day. I've read the complaint now. Hard for me to really understand what the issue is. But, you know, she claims. Her claim is that her sex life was interfered with between her and her husband. I can't wait to hear the testimony that she is going to give on the subj. When was the last time your sex life was interfered by lyrics. I can't wait to hear the testimony. So im kind of looking forward to that one. That one is the least worrisome.

The most worrisome has to be the Arkansas just because of the judges ruling. The police report totally said he has nothing to do with it. we never even got into the procedural part. To appoint some guy who defaulted, yhou wind up with a $30 million judgement. I believe eventually, the system will prevail.

What I make of it is I see a bunch of people looking for a payday. Maybe this is just a high profile, because tupac was high profile, sattelites. Wherever you have people who think they can pick up some bucks, im sure it happens all the time. I amazed at the group of people coming forth in this one. It'll just be. It's a .. Like being on a ship and watching pirates trying to loot it. That's on the one side.

on the other side, there's was nothing there. Taken amount of energy to get what we rightfully tupac's. Then when you take it all, people show up, and you have to scratch your head a little. Not the most unusually.

No matter what you say about him, Suge, the man had a talent of putting out hit records. As long as there is money in records, somebody will put it out.

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everybody from madonna. a series of people. OFF RECORD:not focused. The old days, from a different era. .when it came time for us to choose somebody to look at how estate got fished. he was one guy I interviewed to get into it and look. Everybody loved him. I said no, I wouldnt take him. we were looking for ace., not hyperbole. Want with big six accounting firms, as opposed to someone like him. The time has passed. Think now it's such a big and complex biz, you need a series of tax geeks.

donald david

--30--

It's probate. What happens when someone finds probate. An heir files a petition. Afsni did. She filed early on and said father was dead, she is sole heir. Then she filed saying there's a guy out there name garland who claims to be the father. He's not, and the real father is dead. Bill was served with second. He was put to the question how to respond. he responded that he was father and wasnt dead. Some have suggested there is something untoward about himm telling the truth. That he should have lied and said he wasnt the father and afsni should get whole state.

he filed responding to afsni's petition, saying he is father. when someone dies without a will, calif. law doubles. There is neither spouse or kids. Calif. statute says parents inherit equally. They are battling the issue. They now conceden paternity. We had two days of trial in which she conceded that issue.

There were several petitions preceding this one that said:/. We did dna testing. we did the test, it came out 99.97% that he's father. took blood of all three. Tupac's afsni and bill. From the coroner. They conceded paternity.

Aug. 4 and 5.:

NWSWK 0012

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ESTATE/R DEPT: 90:

She's running around saying all kinds of crazy things-the father is dead. Bill abandoned the kid. He didnt care about son. That he only managed other tapac d ied. Complete hogwash. Bill saw his son from 1971 until 1976 when she disappeared with him. Bill was living in jersey city. She couldnt find him. She described herself as a nomad. That's a nice way to put. she was on drugs, living in bus stations, homeless. The kids weren't living with her at all times. They were nomad. Bill was living with his family in jersey city. He was married, and he had three kids of his own with his wife. That is what the testimony was about. Then when he found tupac was alive in 91, he immediately sought him out. She prevented it.

The fact90s, that she didnt know who the father was, Bill or Legs, who was according to her a street hustler who died in 84. was jailed at time he died on credit card fraud. She said she didnt know. Look at picture of garland and tupac, you'd be crazy if you think.

copies of pictures during the first phase of trial. He was on st. TV.Tupac was quoted as saying in couple of articles when he looked up and saw his father he thought he had died and gone to heaven. Thought he saw the face of how he would look in his forties.

Afeni and tupac lived in baltimore from 84 to 88. Move to calif., lived with geronimo pratt. from 88 to 91. then got in some trouble. Back to NY.

When he did outlaw and bill knew where to reach him or tried to until he did.
he first started trying to reach in at end of 91. Tupac we sin Jnico. Bill got sheild of publisher, named carlyn Lee refused to put him in touch. She didnt feel it was her place to establish a reunion. Finally in 1993, tupac in new york and got shot, bill went to hollview to see him. Subsequently saw him numerous times. Tupac incarcerated from 94 until Nov. 96. Bill saw him at jasmine guys a couple times. At looks movie.
saw him in prison a few times. Then he didnt get out until 8 or 9 months before his death. The resumption of the relationship was good part of the testimony. There were death threats against tupac in prison. Bill arranged for sharpton to go up and talk to.

NWSWK 0013

real issue isn't paternity/it resovles around statute in 1995, in order to inherit from a child born out of wedlock, one needs to do certain things:acknowledge the child, and to have contributed to care and support of the child. That is what the issues are in determining the petition by abmi. Both have to show that they fit definition of parent and acknowledging child and contribute to care and support.

The issue is contribution to care or support. Factiuated legal issue:was the statute govern the conduct in nj and new york. can it reach across state line and govern conduct before it was inacted. We've attacked the statute as being unconstitutional. Judge says he's gunna accept it as c onstitutional.
you got to contribute to support and care. Cot's inacted in 88. They say when tupac was in new york, calif and baltimore that he someone had to comply with a statute that wasnt inacted. it discriminates against unmarried people at time when african americans 70% are born out of wedlock.
Statute applies only because parents are unmarried. Not due process. Calif. have no extra territorial effect. And in this instance, it has no interest in enforcing this statute. Tupac was barely ever a resident in calif during his minority. tupac was 18 in 1988 or whenever.

born june 71.

he did constributed to care and support.
bill had him in his home from 71 to 78. from time to t ime, no regular pattern, he would get tupac bring himm to his home in nj. several witnesses has established tupac was bedwetter. Bill was basketball player. would take him to games and movies. This is all documented.

every single witness is beyond supoena power of calif. The evidence comes from deposition we took. Bill's first wife's video of her deposition in which she said these things. I took him out shopping. there's video of his brother carlos malik, saying he remembers playing with him. They were born within three weeks of each other. Two boys were born within two weeks of each other.

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ESTATEJR DEPT: PG:

when tupac was in prison, carlos and landon, a second brother, went up to see him with garland. one witness rep from new jersey, phil webb, a friend of bill, who play b ball with bill. He was first to recognize tupac in Juice. He knew lee. lee had grown up in nj. she was saying I just started repping tupac. That's bills kid. Police called bill. Said your kids in a movie.

bills ex wife at about same time.

carol lloyd was pregnant. they met, I caring your hubby's child. Lee testified she and Bobi webb were at ... alani walked over and said here's your son.

Globez. that one involved death row. An allegation by globez that death row entered into this arrangement. With a bounceback card, included in All Eyez. Bounceback card. Death Row denies an arrangements with globez. Globez admitted that to extent it was selling merchandise outside of ed, no authority.

one going on now, in which a gentleman took a track from a record or album that was released in connection with million man march. it was called "running with the police." He removed the side tracks, dubbed in his own. Has released the track on an album of his own. Now called "stop the gunfight." His name is Trapp, real name John Parker.

Against. Haitian Jack. Alleging he was defamed by defamed as an.

Orlando Anderson filed claim. The guy allegedly beatened up by suge has filed claim against.

B L Diamonds, a company that sells jewelry, i.e. Steve Gastrock, the accountant for Death Row. He had a personal relationship with the guy who owns it. Suge bought a lot of jewelry at B L Diamond. One thing he bought and gave to performers. Some to Tupac. When we got claim from death row. They alleged they paid out money to B L. That was given out as gift by suge. When Pac was dead, they put it in as claim from death row. Then we got a claim from b.l. that it was never paid. $300k for that one.

NWSWK 0015

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[redacted] DEPT: PG:

There are probably 37 separate actions at this pt.

they've released an album in australia, complete album. An album released in Japan, Blue Dolphin. A guy who apparently sold them a series of tracks claiming he had rights to them. He had actually forged releases. He was a producer hired on a contract basis to do an early demo tape. He sold them to Blue Dolphin.

Kendrick Wall case. He had some tapes that he claim tapes had given to him.

everybody is trying to get a piece of this action. everybody is looking to make a buck on this action.

this happened with the marley estate. A whole history of litigation. All of these have had ..

the free flowing nature of rap performance makes it easier. A lot is contractors, entrepreneurism. technology makes it easier. No big deal to us else side of music.
If dont actual instances.

A website whit tupac music. What can I possess do go shut down the website.

35 are cases we brought. To shut down.

1. What has been the testimony so far in the case? Can you provide it?

[redacted] Page 11 of 13

NWSWK 0016

ESTATE/JR DEPT: PG:

2. What is the claim?

3. On what basis are you pursuing this, what is the argument?

4. The other side is saying, he's a unselfish deadbeat dad. Never played a role in input's life, hide from several different women that he also doesn't support, that input never even recognized or considered him to be his dad. A plane?

5.

NWSWK 0017

MEMORANDUM

TO: Tucker file (No. 1:CV-97-6150)

FROM: RCA

RE: Tucker v. Newsweek and Time

DATE: December 11, 1997

As a result of a recent telephone call from counsel for Newsweek, it appears as if Newsweek's reporter disputes the facts of our conversation. I am, therefore, going to dictate this memo to preserve my recollection of what transpired.

As a result of the defamation complaint which we filed in July against Death Row, Interscope, et al., there was an article that appeared in a Philadelphia newspaper which gave Fischbein's spin of our cause of action as being one for sex damages as a result of Defendants' defamatory conduct. The Tuckers were understandably upset and relayed their distress through Paul Waters, their personal attorney. I recommended because of their high profile that they go on the speaking circuit and explain to the news media that the case had nothing to do with sex, they were not claiming any damages that in any way involved their sex life, etc.

Despite the Tuckers' public announcements to the news media that the word consortium in this case did not refer to sex, and they were making no claim for sex damages, various newspapers and magazines found Fischbein's twist or spin to be good writing material.

In mid to late August, a month after our complaint and weeks after the Philadelphia newspaper article (August 2, 1997), I received a call that a Johnnie Roberts wanted to talk to me with regard to an article that he was writing for *Newsweek Magazine*.

We played telephone tag. I eventually reached him. He said he would call me back "on his nickel." We eventually had a discussion.

My recollection of the discussion is as follows. Johnnie Roberts explained that he was writing an article dealing with the various lawsuits against Tupac Shakur's estate. He stated that Fischbein considered our lawsuit the weakest action of all. Roberts gave Fischbein's spin as to our lawsuit being one whereby we claim that the Tucker's sex life had been affected by Tupac's

recording. I asked Roberts if he had read our Complaint. He said he did. I actually asked him to get the Complaint out and to look at the paragraphs dealing with damages. I pointed out to him that there was absolutely no mention of sex in any paragraphs of the damage count. I went on to state that Paragraph 50 which was the consortium claim for Mr. Tucker is the only paragraph that could in any way be misconstrued to involve sex. I explained in great detail to Mr. Roberts what "consortium" means in the law. I told him in very rare circumstances it can involve an interference with the sexual lives of a husband and wife. I pointed out to Mr. Roberts that our consortium claim in this case did not in any way involve any claim that Tupac Shakur's defamatory recording affected the Tuckers' sex life.

We also discussed all of the important people on Mrs. Tucker's side. I recall mentioning Tipper Gore and the work she did in this area before Mrs. Tucker got involved. Mr. Roberts snickered as if in disbelief that the wife of the Vice-President or any other important individual whom I mentioned would get involved in the case.

Mr. Roberts mentioned the Falwell/Hustler Supreme Court suit and the First Amendment right of Tupac to say whatever he wanted. I pointed out to him that the cases were not analogous and discussed the differences in procedure and subetance.

I could tell from the other end that Mr. Roberts did not want to hear what I was telling him. I became exasperated and went through the entire history from the time of the filing of the Complaint to the article in the Philadelphia newspaper, to the Tucker's going out at my suggestion and pointing out publicly that our lawsuit had nothing to do with sex. I told him that I had received other phone calls from other magazines and newspapers, and it seems that all they wanted to talk about was Fischbein's sexual spin. There is absolutely no question that I told Johnnie Roberts, as I had told the other callers, that the case did not in any way, shape, or form involve a claim for sex.

Although I spent a substantial amount of time as will be confirmed by the long-distance telephone log, I was quite sure that Johnnie Roberts was going to ignore everything that I told him and write the same story that he would have written if he had not called me.

A few days later, I received a voice mail from a local attorney by the name of Leslie Handler telling me that my name appeared in an article in *Newsweek*. I went to a Rite Aid drug store, found the section where *Newsweek Magazine* was located,

leafed through the magazine, saw the article including my name, and bought a copy (September 1, 1997).

Around the time of my discussion with Roberts, I dictated an amended complaint to make unequivocally clear for the record the fact that the case did not in any way involve sex, that no claim was being made for sexual damages, that the sexual spin was Richard Fischbein, and that various newspapers and magazines were taking Fischbein's spin and using it to sell newspapers and magazines. Fischbein was doing this for the obvious purpose of belittling our complaint and potentially affecting potential jurors. After talking to Roberts and seeing the article that later appeared, I was convinced in my mind that the news media was not in any way interested in the truth, but rather merely interested in selling their product.

The amended complaint was mailed to the Court for filing on August 27, 1997. It corroborates the essence of my discussions with Roberts. We received notification from the Court that it was filed on September 2, 1997. It was served on Time Warner on September 9, 1997. Fischbein was mailed a copy on August 27, 1997.

Incredibly, despite all of the above, a reporter for *Time* did a story carrying the cover date of September 22, 1997, which stated:

> ... The prize for the most bizarre suit, however, goes to anti-rap warrior C. DeLores Tucker, who claims that lewd remarks made about her on Shakur's album <u>All Eyez on Me</u> caused her so much distress that she and her husband have not been able to have sex. She wants $10 million.

After talking to Paul Waters and talking to my clients, we felt it was imperative to file a second amended complaint, file separate lawsuits against Time and *Newsweek*, and have a press conference.

There was difficulty in setting up a press conference because I had an incredible amount of office work to do at the time. The second amended complaint was filed on October 1, 1997, and a press conference at the Washington Press Club was held on October 1, 1997.

My path crossed Johnny Roberts a second time in a telephone interview with a Chicago radio station. The subject of First Amendment rights and the <u>Falwell/Hustler</u> case came up. Johnnie Roberts' only comment was that he was not a Supreme Court scholar. He was totally different in his August telephone discussion.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

C. DELORES TUCKER and WILLIAM TUCKER, her husband,

Plaintiffs,

against

RICHARD FISCHBEIN, TIME WARNER, INC., BELINDA LUSCOMBE, NEWSWEEK MAGAZINE, and JOHNNIE L. ROBERTS,

Defendants.

(Caption continues on Page 2)

1271 Avenue of the Americas
New York, New York

July 1, 1998 9:10 a.m.

Deposition of the Defendant,
JOHNNIE ROBERTS, before Rita Persichetty, a Notary Public of the State of New York.

ELLEN GRAUER COURT REPORTING CO.
110 East 59th Street 25th Floor
New York, New York 10022
212-750-6434
REF: 60494A

C. DELORES TUCKER and WILLIAM TUCKER, her husband,

Plaintiffs,

against

RICHARD FISCHBEIN as co-administrator and AFENI SHAKUR as co-administratrix of the Estate of TUPAC SHAKUR,

Defendants.

Civil Action No. 97 CV4717

ELLEN GRAUER COURT REPORTING CO.

110 East 59th Street 25th Floor

New York, New York 10022

212-750-6434

REF: 60494A

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BY: DONALD N. DAVID, ESQ.
and

BETH W. FISCHBEIN, ESQ.

ALSO PRESENT:
THOMAS SCHOPPER, Legal Assistant

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties herein, that the filing, sealing and certification of the within deposition be waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be sworn to and signed before any officer authorized to administer an oath with the same force and effect as if signed and sworn to before the Court.

JOHNNIE ROBERTS, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MR. ANGINO:

Q. Please state your full name for the record.

A. Johnnie Roberts.

Q. What is your address?

A. 134 South Kingman Road, South Orange, New Jersey 07079.

MR. BAINE: Before we begin, let me just note on the record, this deposition, the objection that I had previously made to you in correspondence to your acting as counsel in this matter and in particular to your questioning Mr. Roberts at this deposition, at least to the extent that you have any intention of using this deposition at trial. You are, in my view, clearly a witness to this case, you are a

participant in a critical conversation that you're going to be questioning Mr. Roberts about this morning. In my view, the rules are clear that you are disabled from questioning this witness about anything material to this case and in particular that conversation at trial, if not in discovery, and as I've said to you before, we will most certainly object to your using at trial any deposition that you conducted and in particular this one.

So our position is that you are disabled from acting as counsel in any examination that will be used at trial.

Thank you.

Q. What is your full name?

A. Johnnie Lee Roberts.

Q. Mr. Roberts, what is your educational background?

A. I have an undergraduate degree from Eckerd College.

Q. What is the spelling?

A. E-c-k-e-r-d.

Q. Where is that?

A. St. Petersburg, Florida. Political science bachelor, that's it.

Q. Did you take any courses in journalism when you were in college?

A. No.

Q. What year did you graduate from college?

A. 1977. I guess I should amend that last answer. I took writing courses in college. They weren't necessarily journalism courses.

Q. Was there a journalism department at that particular college?

A. No.

Q. What did you do after you graduated from college?

A. Well, while in college I worked part-time at the local newspaper, The St. Petersburg Times. Upon graduating—

Q. I'll just ask another question along those lines. What did you do for the newspaper?

A. A variety of jobs from, this was a part-time job of course,

working in the advertising department, ultimately though I worked as a researcher for the editorial department.

Also with respect to an earlier question on education, upon graduating I was hired on full-time at The St. Petersburg Times at which time I did attend a journalism institute for that summer.

Q. What was your class rank in graduating from college?

A. I couldn't tell you that exactly. It was fairly high though.

Q. In the course of going to college did you have certain subjects that dealt either directly or indirectly with things such as logic?

A. Much of it did.

Q. When you were in college were you exposed to the elementary principal that all men are mortal? Socrates is a man, Socrates is mortal, did you come across that in college?

A. I don't know precisely.

Q. But something along those lines?

A. It was a liberal arts education.

Q. You understood that that is a conclusion that one can reach if all men are mortal, Socrates is a man, Socrates is mortal; is that right?

A. Yes, more or less.

Q. Now if we say some men are rich, Socrates is a man, can we say that Socrates is rich?

A. No.

Q. It's not a proper conclusion?

A. No.

Q. Doesn't follow; is that right?

A. No.

Q. So you knew that from studying in college?

A. I suspect so.

Q. Now, when you graduated from college you went on to continue working for a newspaper, now on a full-time basis; is that right?

A. Correct.

Q. In what capacity did you work?

A. As a reporter.

Q. There are various types of reporters. What type of work were you doing?

A. Not quite sure—

Q. For instance, did you have a beat? I'm trying to get more specific.

A. Yes, I had a number, I worked on a number of beats. I worked a number of beats, yes.

Q. Did you have particular types of stories or were they very general?

A. They ranged from general to stories on a particular beat which are one kind of story about that beat to investigative.

Q. Did you at the time of your first job have occasion to report on things that involved writings whether they be books or whether they be complaints that might be filed in courtrooms or whether they might be particular documents or they involved something in terms of a writing? Did you have a course to do any reporting along those lines in your first job?

A. As source material, yes.

Q. So that did you learn fairly early in your career that if you're going to report on something that is a writing, you need to have the writing?

A. It varied. In many instances, yes. Under certain circumstances, no.

Q. So tell me what circumstances if you were reporting on something that was actually in a printed form when you wouldn't need the printed form.

A. Well, if I had access to the source.

Q. The person who wrote it?

A. The person who wrote it, that's one instance.

Q. What other instances?

A. If I had talked to, in the case of you mentioned a legal document, I suspect that if I had talked to all parties concerned, perhaps even the judge, that perhaps in that instance it would not be necessary depending on what I was focusing on in the story.

Q. But if you were focusing on the writing portion of the story would you not need the writing?

MR. BAINE: Objection to form.

Q. He's going to do that throughout, so you can answer.

A. Repeat your question please.

Q. But if you were focusing on a writing, for instance a Complaint, would you need the Complaint?

A. If I were specifically going to describe something in that Complaint, yes.

Q. And you learned that from the beginning practically; is that right?

A. Fairly early on.

Q. With regard to that writing I suspect that as part of your job you did report on legal types of things on occasion?

A. Yes.

Q. So that it seems that most newspapers happen to talk about lawsuits at different times and yours was not an exception; is that right?

A. Correct.

Q. So from the beginning of your career you would have been

aware of some elementary aspects of the law such as the fact that a suit normally involves a piece of paper; is that right?

MR. BAINE: Objection to the form.

Q. Is that correct?

A. That paper is involved in lawsuits.

Q. In starting a suit you have a piece of paper?

A. That you file a lawsuit?

Q. Yes.

A. Right.

Q. You knew that from the beginning?

A. At some point early on in my life.

Q. And that piece of paper describes the basis of the lawsuit; is that right?

A. Generally.

Q. Your experience was such that at the top of the first piece of paper there's usually the name of the parties that are involved; is that right?

A. Correct.

Q. And then it goes through a description of who the parties are and what happened and what their claims are; is that what your experience has been?

A. Generally, yes.

Q. When you were reporting in Florida did you have both State cases and Federal cases?

A. They were almost exclusively State cases.

Q. Almost exclusively State cases.

And did you understand fairly early on that in those State cases there was a requirement of some specificity in terms of the facts and the damages?

MR. BAINE: Objection to the form and to the extent that you're calling for a legal opinion.

MR. ANGINO: No, I'm looking as a journalist.

Q. I know you're not a lawyer, but I'm just talking from having looked at enough Complaints in your life time you would see that in

those Complaints in the State Courts in Florida. There would be a description of what happened and then certain claims made; would there not?

A. Yes.

Q. There are words used in Complaints and when you saw those words how did you, if you didn't know what a word meant, how did you find out what a word meant?

A. Generally I would consult a dictionary, namely Black's Law.

Q. So from early on you became familiar with Black's Law Dictionary; is that right?

A. Yes, I covered the courts once.

Q. You covered the courts? So "covering the courts" meant you had to know something about the words that were being used; is that right?

A. I mean I had to learn.

Q. Let's talk about "covering the courts", what that involved.

MR. BAINE: That's not really a question.

Q. What did that involve for you?

A. I can't answer that without a little more specificity.

Q. You were a reporter working for a Florida newspaper and you covered the courts, what did you do?

A. Well, I'd go down to the courts, check for the cases that had been filed, if they seemed newsworthy I'd go to the clerk, find out where the paper was, contact the lawyers.

Q. And write about them?

A. Not necessarily write about it.

Q. Sometimes you would and sometimes you wouldn't?

A. Right.

Q. What portion of your early career working for that Florida paper involved covering the courts?

A. I don't recall precisely.

Q. The majority?

A. No.

Q. A portion of your time?

A. Yes.

Q. With regard to the particular paper that you were working for, how many reporters were there?

A. Don't hold me to this number, but about 100.

Q. Of those 100, how many covered the courts?

A. At any one time no more than two, three, four.

Q. So you were somewhat specialized because you were one of those two, three or four; is that right, as far as the courts?

A I covered the courts as a beat for a while, yes.

Q. So that although there were—whenever we ask questions in depositions if you say about 100, if it turns out to be 80 or 120 we are not looking for that kind of specificity. We are looking for generalities. If a particular newspaper as an example had 10 people versus 100 we get a sense then of the size of the particular paper.

MR. DAVID: I object to that. I'm looking for specificity.

A. Well, at various times—

MR. BAINE: I don't think there's really a question pending.

Q. There's no question, I'm just telling you as I'm asking you questions I want you to know that we are just trying to get a sense of the size of that newspaper and your best estimate is that it had approximately 100 reporters, approximately 100 reporters, two, three or four of whom at any one particular time might be covering the courts; am I correct?

MR. DAVID: Again I'm going to object, first of all to the colloquy, but more importantly to what we are looking for. Once again, you can state what you're looking for, Mr. Angino, but you cannot state what I am looking for. I am looking for accuracy.

Q. Am I stating accurately the fact that there were a certain number of reporters that happened to be about 100?

MR. BAINE: He's done. He's given his answer as best as he can.

Q. And the number that reported the courts were two, three or four?

A. At any one time.

Q. You were one of those two, three or four?

A. For a while.

Q. What's a while?

A. I don't recall how long I worked that beat, but it would have probably been no more than a year.

Q. Complaints, I assume that you saw many of them involved automobile accidents?

A. I wouldn't say many, I can't answer that.

Q. What would be your best recollection of the most common type of Complaint that you saw during that period of time?

A. I covered criminal and civil.

Q. Well, I'm talking about civil.

A. There were torts.

Q. And torts, do they mean automobile accidents, are those torts?

MR. BAINE: Objection. You asked that question two different

ways.

Q. Okay, I'll try to rephrase it. You understood that there is something called the civil law; is that right?

A. Yes.

Q. And you understood there is something called the criminal?

A. Yes.

Q. You at least by covering the courts understood the difference; is that right?

A. Yes.

Q. In the civil law did you understand that there were torts and there were contracts?

A. Yes.

Q. When you took the courses in college in your major, in political science, did you have any courses that discussed, even in an elementary way, certain legal principals?

A. I vaguely recall.

Q. You vaguely recall. For instance, there are oftentimes in

political science courses areas where various aspects of the law are discussed; are there not?

A. Yes.

Q. So even by the time you graduated from college you knew that there was civil law and that there was criminal law; is that right?

A. Yes.

Q. And you knew there were torts and that there were contracts; is that right?

A. Yes.

Q. So that when you were even in college were you aware that there was a Black's dictionary?

A. I think so.

Q. So you knew that even in college and once you got out of college you actually used Black's dictionary in order to cover the courts; is that right?

A. On occasion.

Q. On occasion if you still had any questions that weren't answered by Black's dictionary did you consult with lawyers whom you respected?

A. Yes.

Q. So that if you wanted further elucidation or further explanation with regard to something, you would on occasion talk to a lawyer; is that right?

A. we have a lawyer on staff.

Q. You actually had a lawyer on staff so you would talk to him or her?

A. Yes.

Q. Back in that period of time was there something in place with respect to your particular newspaper that required, on occasion, for the lawyer who was on staff to be involved with your stories?

A. In most cases.

Q. In most cases?

A. That's because my editor was also a lawyer.

Q. So your editor was a lawyer and there was, in addition, another lawyer on staff?

A. Yes, there was a lawyer on retainer.

Q. On retainer. And let us assume as a hypothetical that there

was an automobile accident and the automobile accident might have involved a person that the people in the community would know and you were going to write a story about that accident. Would all stories such as that be reviewed by the lawyer on retainer?

A. No.

Q. Under what circumstances would the lawyer on retainer look at the story?

A. Well, if I was just writing about an accident, probably not, that's not, that's a police story and it would be basically based on the police report.

Q. Looking at the police report, so if you were writing about an accident you would know that there's a police report; is that right?

A. Yes.

Q. And you would know that the police report has certain information in it; is that right?

A. Yes.

Q. Now that accident could therefore lead to, under certain

circumstances, a lawsuit; is that right?

A. Could it? I guess, yes.

Q. And from your experience oftentimes there were lawsuits involving automobile accidents; were there not?

A. There were lawsuits involving automobile accidents.

Q. If you covered the beat at the courthouse and you went to—did they have something called a patontry (phonetic) or where would the place be called where the Complaints were filed down there?

A. Which Complaints?

Q. In a civil case down in Florida what would that department be called where you filed a Complaint, patontry or clerk?

A. Clerk.

Q. You would go to the clerk's office, I assume, and say, "Any Complaints filed today", is that par for the course?

A. Generally.

Q. And they got to know you and said, "There were six filed

today", would you look over those six?

MR. BAINE: Objection to the form of the question. You're asking him to assume that the clerk has said to him six were filed today?

MR. ANGINO: Right.

A. Well, they wouldn't necessarily say there were six, they would say suits were filed and maybe I would, maybe I wouldn't.

Q. You might look at them, you might not?

A. Correct.

Q. How would you make a decision as to when to look and when not to look?

A. Well, if I were actively covering a trial at the time I probably wouldn't look at them.

Q. Just busy doing that trial?

A. Or doing other stuff.

Q. Slow period of time?

A. Was it or is it?

Q. If it is a slow period of time then you might look at it?

A. Always looking for stories, yes.

Q. As part of looking for a story is one of the key ingredients the people in court?

A. No, not necessarily.

Q. For instance, we can't pick up a newspaper today without seeing things about Clinton; can we?

A. Generally, that's correct.

Q. Historically you are aware of other individuals, where reporters spent a considerable amount of time talking about perhaps their sexual lives, such as Tower, are you knowledgeable about the Tower investigation?

A. Yes.

Q. And he went off about, months and months about his drinking and his sexual predilections; did he not?

MR. BAINE: Objection to form.

Q. Newspaper covered it for a long time; did it not, the Tower period?

A. I vaguely recall there was extensive coverage of that.

Q. If there was an individual who wanted to be president and

he happened to be on a yacht, you remember who that was?

A. Yes.

Q. Who was that?

A. Gary Hart.

Q. And was there a lot of coverage about that particular situation?

A. Yes.

Q. Did he act, in the end, decide he wasn't going to proceed because of this coverage?

MR. BAINE: Objection to the form.

MR. DAVID: Objection.

A. I don't know why he decided, but he dropped out of the race.

Q. Didn't he say he dropped out?

A. I don't recall.

Q. So that if Gary Hart was not Gary Hart and Tower was not Tower, do you think there would have been the same amount of coverage as to their escapades?

MR. BAINE: Objection to the form.

Q. You may answer.

A. Certainly not.

Q. So at least the names of the people and their particular celebrity status or public figure status has something to do with news reporting; would you agree?

A. Has something to do with it.

Q. What is your answer?

A. I guess if they were engaged in activity deemed to be newsworthy journalists would write about them.

Q. And you've heard the terms "public figure" and "private figure"; is that right?

A. Yes.

Q. What is your best definition for a public figure?

MR. BAINE: Well, object to the extent that you're calling for a legal definition.

Q. Journalistic definition.

A. Well, someone who is widely known for any number of reasons.

Q. And a private figure?

A. As the word would suggest, somebody that is unknown.

Q. And in some portions of newspapers and in some portions of magazines there are particular sections devoted to, quote, celebrities, quote, or public figures; is that not correct?

MR. BAINE: Objection to the form. Are you asking whether there are sections dealing with celebrities and public figures or are you asking whether there are sections with those titles?

MR. ANGINO: I'll take the first dealing with those copies. Some may actually have those titles, but let's make it more general dealing with those subjects.

A. Well, sort of a yes and no answer for me.

Q. We took the deposition of Belinda Luscombe of Time and she mentioned that she authors a particular section that deals with

that type of subject. Are you familiar with what she writes for Time?

A. Not really.

Q. Does Newsweek have a particular section of its magazine that discusses what is happening in the celebrity area or newsworthy area or public figure area? I'll eliminate the newsworthy, but that's obviously public figures and celebrities?

A. Generally so, yes.

Q. What is that section entitled?

A. Newsmakers.

Q. If you look at Newsmakers normally you see names that the public would recognize; is that right?

A. Not always.

Q. But mostly?

A. Varies from week to week.

Q. So that someone like a Gary Hart or a Tower, at a particular time when certain events were going on, might you expect to see those individuals in the section that we are discussing?

A. Not necessarily.

Q. We were talking about what is newsworthy and we were

talking about public figures, celebrities. Would you agree that what public figures or celebrities do is often reported in publications?

A. I dor 't understand the question.

Q. Madonna having a baby, would you expect to see that in a newspaper?

A Yes.

Q. If your wife had a baby would you expect to see it in the newspaper?

A. Mine? Probably.

Q. If my wife were having a baby would you expect to see it in the newspaper?

A. The local newspaper, yes.

Q. There you go, but if my wife was having a baby would you expect to see it in Time or Newsweek?

A. Under normal circumstances, no.

Q. But if Madonna was having a baby, would you expect to see it in Time or Newsweek?

A. Probably.

Q. What is the difference?

A. Madonna is someone known the world over.

Q. That's right. So being known the world over in and of itself makes for copy; does it not?

A. No.

Q. It does not?

A. No.

Q. Is there some reason why we have magazines that are devoted to celebrities?

A. There are a number of reasons, yes.

Q. What are they in your estimation?

A. There's an audience for it.

Q. People want to read about things; is that right?

A. Correct.

Q. They want to know what clothes they wear; is that right?

A. Among other things.

Q. They want to know who they're dating; is that right?

A. Among other things.

Q. They might even care about their hairdos; is that right?

A. Among other things, I guess, I don't know.

Q. They may care about whether they had babies or didn't have babies or got divorced or didn't get divorced; is that right?

MR. BAINE: Objection to the form of the question, pretty broad and pretty vague.

Q. Is that not true?

A. In some cases it's true. Some cases, no.

Q. So you didn't take a course in college in journalism. Did the time come about where you read books dealing with journalism and reporting?

A. There were, I vaguely recall some source material in that course.

Q. What course?

A. That summer course I took upon taking the job at The St. Petersburg Times.

Q. Tell me about that summer course.

A. Its just a basic course in reporting techniques, elementary

writing techniques, I guess it would have been what we'll call analogous to Journalism 101 in college, I guess or even high school.

Q. So you did take a course in basic journalism or basic reporting?

A. Yes.

Q. And this course lasted how long?

A. It was during the summer so no more than three months. It might not have been three months.

Q. During the course of those three months did you actually go to a particular place to take that course?

A. Yes.

Q. Where was that particular place?

A. It was in St. Petersburg on Central Avenue.

Q. Was it a school or what type of place was it?

A. It was a—the name of it was The Porner Institute.

Q. Can you tell me in general terms what happened there?

A. Well, we were assembled there in the summer course. We

had an instructor and he taught us.

Q. How many approximately were in your class?

A. I don't have a vague notion there. It was so long ago, I mean it wasn't hardly more than are here.

Q. Ten, 20?

A. No, ten.

Q. More like ten, okay. Approximately ten people, we'll use that.

Who was the teacher or professor?

A. I honestly can't tell you. I don't remember that.

Q. What was his or her background?

A. I vaguely recall he was a journalism professor at an institution of hard learning in Tampa.

Q. Did he come once a week or more than once a week?

A. More than once a week.

Q. Your best recollection, three times a week?

A. Two or three.

Q. Two or three times a week. Was class an hour or longer?

A. I think it was during the morning hours.

Q. Approximately how long?

A. Each class?

Q. Yes.

A. I don't know, two hours, three hours. I don't know, I don't remember.

Q. Two or three times a week, two or three hours, for three months; is that what we are talking about?

A. I don't remember precisely.

MR. BAINE: Now you're making it sound more precise than what he said.

A. I don't remember the number of students precisely, the number of days I don't remember precisely, nor the number of hours do I remember precisely.

Q. But your best recollection it was two to three hours?

A. That's a guess I just don't remember.

Q. It was in the morning?

A. Yes.

Q. It was two or three times a week?

A. Again it was more than once. It could have been two, it could have been three, it could have been more. I just don't remember.

Q. And it lasted for approximately three months?

A. No more than three months.

Q. Was there a book?

A. I don't recall that there was a book.

Q. Were the people attending that course individuals working for newspapers or publications?

A. I remember it was a mixture, many of them were college students as I recall.

Q. Did he, as part of the course, teach you what was quote, newsworthy?

A. We covered what may or may not be news stories, yes.

Q. Did he, as typically is done in 101 or basic journalism, state dog bites man newsworthy?

MR. BAINE: Objection to the form. I'm not sure what that is asking.

Q. Is that a common thing that's taught in Journalism 101, dog bites man, newsworthy?

MR. BAINE: Objection to the form of the question. I don't know what you're asking for.

Q. Do you know what I'm talking about?

A. When a dog bites a man is that newsworthy? It's a little more complicated than that. There are—oftentimes that's a story.

Q. Oftentimes that is a story. What about man bites dog?

A. Generally.

MR. BAINE: Objection to the form. Are you asking him whether that is newsworthy?

MR. ANGINO: Yes.

A. It's not necessarily newsworthy, no.

Q. You never heard that elementary explanation in Journalism 101?

A I didn't take Journalism 101.

Q. Or this course, did he tell you dog bites man is a common thing it's not newsworthy, man bites dog is unusual, newsworthy? You never had that?

A. I don't remember this precisely.

Q. It is a nice day. Newsworthy?

A. Often.

Q. That's a nice day. The fact that there is a torrential storm and there's damage done to houses is more newsworthy or just the same?

A. Probably more.

Q. What were you taught in terms of what is and what isn't newsworthy?

A. Something that has or is deemed to have an impact on a large number of people, much of, or a lot of what happens in government, disasters, tragedies.

Q. Things that are sensational?

A. No, not necessarily.

Q. Not newsworthy?

A. Not necessarily.

Q. Did you grow up in the period of time of Peyton Place?

MR. BAINE: You mean the book?

MR. ANGINO: Book, television program.

Q. Television show went on for a long time?

A. Yes.

Q. It's gotten to be actually an expression of a particular type of place, if you use the words "Peyton Place" does it mean something to you?

A. I never watched it.

MR. BAINE: Neither did I.

Q. Did you know that the idea behind it was just people in a town doing a lot of sexual things?

A. Not really, I don't watch much television and so I don't know much about that show.

Q. If you pick up a typical newspaper, magazine or book would you expect to find one or more articles dealing in some way or

another with sex?

MR. BAINE: Objection to the form of the question.

A. No.

Q. You don't think sex is one of the major areas that appears in print and newspapers and movies and television?

MR. BAINE: Objection to the form. You can answer.

A. I'm sorry, your question again is?

Q. Are you telling us as you sit there that sex is not a predominant part of our mass media?

A. No, I'm not saying that. I thought the question was if I picked up a particular book would I expect to see a story or two about sex.

Q. I'm saying a magazine or a newspaper, would you not expect if you went from the front cover to the back cover to find some reference to sex in some way or another?

MR. KASTENBERG: Are we talking about a specific?

A. I'm not quite understanding the question. I thought the question was if I picked up a particular magazine would I find a story or two about sex and my answer to that question is no.

Q. Are there two words that we hear over and over, sex and violence, in the media? Have you heard them coupled together?

A. Yes.

Q. What does that mean to you?

A. It means that the person uttering that probably thinks there's a lot of it.

Q. So whoever says that thinks there is a lot or maybe too much sex and violence; is that right?

MR. DAVID: Object to the form.

Q. Go ahead.

A. I suspect that's what they mean, but I don't know.

Q. Do you think there's too much sex and violence in the media?

MR. BAINE: Does he think so?

A. No, I never said that.

Q. Do you think there is?

A. I think there's a lot.

MR. BAINE: He's not finished with his answer.

A. I think there's a lot.

Q. Do you think if there's a sexual angle to something that that would have more interest to your readers than if there isn't a sexual angle all of the things being the same?

MR. BAINE: Objection to the form of the question and to the term "something".

A. Okay, so the question is?

Q. If you have a sexual angle to a story do you think that would have particular interest to your readers?

MR. BAINE: Objection to the form. Now you're asking a hypothetical question and really giving none of the facts and circumstances of the hypothetical question, so I'm going to object to the form of that hypothetical.

Q. Would you answer please?

A. Not necessarily.

Q. So that what you're saying is that when you're looking for something to write about, the fact that you can give it a sexual angle is not something that you would consider in order to get better interest from your readership?

MR. BAINE: Objection as to the form.

A. You mean me personally? No, I don't look for sexual angles in the stories I write.

Q. Are you familiar with The National Inquirer?

A. Yes.

Q. What do you know about The National Inquirer?

A. It's a tabloid.

Q. What is a tabloid?

A. They often have very catchy, outlandish headlines.

Q. A lot of sexy things?

A. I can't comment.

MR. BAINE: Are you asking about The Inquirer or a tabloid

in general?

MR. ANGINO: Either or both.

A. The quantity I can't comment on, but that is a topic.

Q. You're familiar with the word "sensationalize"?

A. Yes.

Q. Would you say tabloids sensationalize stories?

MR. BAINE: All tabloids you're asking about now?

MR. ANGINO: Yes.

A. I wouldn't say all tabloids, no.

Q. Would you say The National Inquirer sensationalizes stories?

MR. BAINE: Objection to the form. You haven't laid a basis for him knowing about The National Inquirer.

Q. Do you know about The National Inquirer?

A. What I see at the check-out counter.

Q. In fact when you go out of a supermarket this is the common

place for tabloids to be appropriately placed; is that right?

A. Generally.

Q. Do they generally have sensational type headlines and covers?

A. They don't have the same headlines that appear in publications I have worked at.

Q. Would you answer whether they have sensational headlines?

A. I don't know whether they're sensational or not.

Q. Do you know what the word means?

A. Yes.

Q. What does the word mean?

A. It means aberrational, catchy, flashy.

Q. Aren't those the headlines in the covers of The Inquirer and similar tabloids that appear at the checkout counters?

A. Some I would say fit that category. Others, no, I wouldn't say that.

Q. In the category of priorities what would you put as Number

1 as being the most important to make a story newsworthy?

MR. BAINE: Objection to the form. Are you asking him what is the character of the things that are being reported on it that makes it newsworthy or the thing that he puts into his story? I'm not sure what the question asks for.

Q. What would the subject matter be, whether it be persons, places or things, that to you would be the most important in making something newsworthy?

MR. BAINE: You want him to rank those three things? Person, places and things?

Q. No. I'm saying what comes to mind to you Number 1 as making something important?

A. It just varies from story to story, even from beat to beat.

Q. Back in Florida, the first job, Joe Doe plumber's son brought a lawsuit because his fingernail was broken in an automobile acci-

dent; does it sound like a story?

A. That may or may not be a story.

Q. The mayor brought a lawsuit because he was in an automobile accident where his fingernail was broken. More of a story or the same degree of story?

A. I'm sorry?

Q. More or same degree of a story than the plumber's son?

A. That's apt to be more.

Q. Because of the person; is that right?

A. In this instance.

Q. Somebody killed, more of a story or less of a story than the fingernail?

MR. BAINE: Are the facts the same? Same automobile accident, same person killed versus fingernail injury, which is, now your question is which is more?

MR. ANGINO: More of a story.

A. If someone is killed in an accident.

Q. So what it is is the person is important; is that right?

A. No, no, no. Going back a couple of questions you asked me to prioritize place, person, thing. I said it depends on the circumstances. It depends on the story.

Q. One of the circumstances is the person?

A. No, not necessarily. If in the case of a plumber's son, if there had been a lot of accidents at this one location, the fact that there had been a lot of accidents might make it a story, not what happened to him, not to the extent of the injury.

Q. That's another factor, but I'm saying in the scheme of things as a person there may be the extent of the injuries, there may be the fact that this particular location has a number of accidents, it may be that it has a number of accidents because the City hasn't done a certain thing with regard to that particular traffic light. Are we talking about various factors that can make a story?

A. Always.

Q. After all this questioning are you willing to accept the fact

that the notoriety of the person is one of the important factors?

A. Of what makes a story?

Q. Yes.

A. Well, again it depends on what that person is doing. In and of itself?

Q. In a vacuum.

A. In a vacuum?

Q. Yes.

A. I don't understand the question.

MR. BAINE: I don't understand the question. If there is a vacuum?

Q. If all we have are a set of facts and the set of facts are the same, the set of facts apply to President Clinton, the set of facts apply to the plumber's son, wouldn't you admit that the story would more likely involve Clinton?

A. If the President was involved in an accident, we would write a story about it.

Q. Even if his fingernail was broken?

A. Of course.

Q. Even if he wasn't injured?

A. Probably so.

Q. So the person does have a part to play in the story; is that right?

A. Yes.

Q. Thank you.

The second area may involve the subject of the story; is that right?

MR. BAINE: Objection to the form of the question. You've characterized as the second.

Q. I didn't mean it in terms of second in priority, just second that we are going to talk about. A second area that I would like to discuss with you might be the subject matter.

MR. BAINE: Okay, that's not really a question yet.

Q. Is sex an interesting thing to many readers from your journalistic experience?

MR. BAINE: We can probably stipulate that it is an interesting thing, Mr. Angino, but I think you're asking whether in his experi-

ence readers find sex an interesting thing to read about in newspapers and magazines.

MR. ANGINO: I'll accept that.

Q. Will you answer that?

A. It is a popular subject.

Q. So, certain celebrities are popular, sex is popular; is that right?

A. Yes.

Q. Would you agree that unusual things are popular stories?

MR. BAINE: Objection to the form of that.

A. I don't know what you mean by that.

Q. We read about floods, we read about catastrophes, we read about tragedies. Those are what I'm referring to being unusual.

A. Well, I wouldn't characterize them as unusual, but we write about them.

Q. Because, what?

A. Generally they have a big impact on the people that are

reading your stories or on their town.

Q. Or on the world or on the country or whatever and it goes back to if a dog bites a man, dogs bite people every day; do they not?

MR. BAINE: There's another principle that you went through before. I think you're violating, Mr. Angino.

MR. ANGINO: What's that?

MR. BAINE: By your hypothesis floods are unusual, floods are interesting, therefore unusual things are interesting, that seems to be the logic of your questions and I think there's a problem with that.

Q. Would you agree that more dogs bite men than men bite dogs?

MR. DAVID: Objection. There is no predicate for him having any knowledge about how many men bite dogs.

Q. Would you be able to answer that question?

A. Probably.

Q. What do you think is more common?

MR. BAINE: We'll stipulate that more dogs bite men so we can move this.

Q. So if you accept as a hypothetical that oftentimes in introductory journalism there's even a little picture of a dog biting a man and next to it a man biting a dog—

MR. BAINE: I think you asked him about this.

MR. ANGINO: I know. I'm proceeding and obviously we are proceeding because I want to get the witness to say if it's accurate that something that is not common may be newsworthy. Would you agree?

A. Something that isn't common?

Q. That isn't common.

MR. BAINE: May be newsworthy?

Q. May be newsworthy?

A. Yes, but dogs biting men is common and often get written about.

Q. But what we are saying is it would be more newsworthy if a man bit a dog; would it not?

MR. BAINE: Objection to the form.

Q. Would it not? It would be strange; wouldn't it?

A. Yes, I guess it would be, yes.

Q. It would be strange, you know, say, "Hey, this is a strange situation, this man went over there and bit that German Shepherd"; right?

A. So I took that as literally the case?

Q. You never took it that way?

A. No, no.

Q. But if tomorrow when you go back to New Jersey and somebody calls you up and said, "You know what happened, the mayor of the town bit a dog", would you want to look into that?

MR. BAINE: Would Johnnie Roberts, news reporter, want to look into that?

A. No.

Q. But if Johnnie Roberts were in Florida he wouldn't want to look at that?

A. No, I never, no.

Q. How about the mayor of your town when you're in Florida having sex with a 12-year-old, would you want to look into it?

A. Me personally?

Q. As a reporter, when you go back to Florida?

A. No.

Q. Wouldn't want to look at it?

A. No.

Q. Well, we'd better move you along. Through your career here how long were you in Florida?

A. I was born there, so I left in—

Q. I'm sorry, I had you working for a newspaper on a full-time basis with one year approximately covering the courts. How long did you actually work at that newspaper?

A. Roughly the fall of '77 until spring of '81.

Q. So you worked there for four years; is that right?

A. Yes.

Q. You worked there for four years as a reporter?

A. Yes, I did different things, but generally yes, it was as a reporter for most of that time.

Q. Which period of that time was that approximate year that you were covering the courts?

A. First, I don't know that it was about a year it could have been some months. I don't know what it was, I don't know, I don't remember.

Q. Sometime during those four years?

A. Yes.

Q. Can you tell me what you were doing for the other three years?

MR. BAINE: Objection. You keep assuming it was one year. He said that was the outer limit, it's not more than a year.

Tell him what else you were doing during that time.

A. I covered police, I covered education, housing, transportation, did some investigative stories, some politics.

Q. How long did you cover the police as your beat?

A. A short time. I don't remember precisely, but a short time.

Q. Now when we refer to "beats", if you have a particular beat are most of your stories, if not all of your stories, pertaining to that beat?

A. Most of them.

Q. So if you're covering the courts most of your stories are dealing with the courts or dealing with a police beat most of your stories are dealing with police. If you're covering with an educational beat most of your stories would be about education; am I accurate?

A. Generally.

Q. In each of these areas there are particular idiosyncrasies that you would eventually become familiar with; is that right?

MR. BAINE: Objection to the form of that question?

A. I don't understand.

Q. If you're dealing with housing there are potentially certain laws that apply to housing, there are potentially certain concepts that apply to housing such as the right of the poor to have housing, that's what I'm talking about. So if you're dealing with a particular area it might have its own nuances; is that correct?

A. There are things peculiar to it.

Q. I'll accept that. Things peculiar to it?

A. Yes.

Q. The law would have things peculiar to it?

A. I don't know about the law. I'm not sure what you're asking me now.

Q. Torts and contracts, you're more likely to see that when you're covering a beat that deals with the law than you are if you're dealing with housing; is that not correct?

A. Probably.

Q. So legal terms obviously would be more peculiar to the law, housing terms would be more peculiar to housing, education terms

would be more peculiar to education?

A. Generally that's correct.

Q. And each of these areas has his or its own experts, people who know about housing or people who know about law or people who know about the police; is that right?

A. That's generally correct.

Q. When you dealt with these different areas would you learn who would be knowledgeable in those areas?

A. Generally.

Q. If you wanted to talk about things dealing with the law you talked, you mentioned there were lawyers to talk to, if there were housing there'd be people you'd be able to respect and consult with?

A. Generally so.

Q. So that in each of these areas there would be—let's take a break.

(Recess taken 10:15 a.m. to 10:20 a.m.)

Q. Mr. Roberts, each of these areas that we talked about, from your experience as a reporter working in Florida potentially involved

with what we will call writings, we mentioned as an example in the court area Complaints and the police area obviously police reports, in the housing area certain laws that might apply to housing or certain contracts that might apply to housing, would you agree that it's common that when you were covering beats or doing reporting that you are dealing with writings?

A. This is the source material?

Q. As source material.

A. Yes.

Q. If whatever your article deals with has a basis in a writing is not the writing the most important source?

MR. BAINE: Objection to the form. That's a very broad and vague question without any specifics, so it's a little hard to answer that.

A. It may or may not be.

Q. If we are talking about what a lawsuit is about or what a Complaint says would not the most important source be the Complaint if that's the story?

A. In many instances, yes. In others, no.

Q. When yes, when no?

A. Well, if it's just about what it's about, if it's a lawsuit growing out of a business dispute, if I talked to both lawyers who said it grew out of a business dispute I probably wouldn't necessarily need the Complaint.

Q. But if you were going to reference in something that you were writing that the suit alleges or that a person in a suit alleges, wouldn't you need the Complaint?

A. In many instances I would want the Complaint. In other instances, again, if there was complete agreement among representatives of both parties, not necessarily.

Q. Even though that complete agreement differed from what the suit said?

MR. BAINE: Objection to the form.

A. I don't understand.

Q. I think what you are saying is if you talk to the Plaintiffs and

the Defendants and they have complete agreement as to what the suit is about you wouldn't need the Complaint. Is that what you are saying?

A. What I'm saying is if I talked to you and you said it was about A and I talked to the other lawyer and he said it was about A, I—

Q. You would know it's about A?

A. I would know that.

Q. You would appropriately say the suit was about A without looking at the Complaint?

A. I think I could.

Q. Now, if Lawyer A says it's about C and Lawyer B says it's about X then you'd have to have the Complaint?

A. I would probably in that instance want to have it in front of me.

Q. Now in terms of sources the Complaint under those circumstances is a source; is that right?

A. Yes.

Q. Lawyer A is a source; is that right?

A. Yes.

Q. Lawyer B is a source; is that right?

A. Yes.

Q. The parties themselves are sources?

A. Yes, any of these are potential sources, yes.

Q. Any of these are potential sources. What about another newspaper that writes about that lawsuit; is that another source?

A. Potentially.

Q. It's another potential source?

A. To the extent I might have learned that there was something deemed to be newsworthy, a lawsuit or dispute, I might have first red it in another newspaper.

Q. Right. And would you assert that the suit involved A just because another newspaper said it involved A?

A. No.

Q. You would want better sources than that; is that right?

A. I would just report the story.

Q. But you would want better sources than just what another newspaper said?

A. Just what that newspaper said, yes.

Q. You would want better sources?

A. I'd want other sources.

Q. After 1981 where did you go?

A. Wall Street Journal.

Q. In what capacity?

A. I was a writer.

Q. Writing what types of articles?

A. In general, business and finance, different beats.

Q. What were the beats?

A. Financial services industry, high tech, education, regional economy, retailing, financing, telecommunications, entertainment and media, mergers and acquisitions, consumer electronics, maybe a couple more.

Q. You were there from when to when?

A. From '81, mid-'81 to late '84.

Q. Entertainment and media?

A. I'm sorry, late '94.

Q. So you were there for 13 years approximately?

A. Yes.

Q. Entertainment and media, are you talking about celebrities?

A. No.

Q. What are we talking about?

A. The biz in show biz.

MR. BAINE: Can we make sure the reporter understands that.

A. The business side of the entertainment media industry that entailed coverage of macrodevelopments in the industry, consolidation of the entertainment and media industries, the mergers and the takeovers, it entailed strategic developments at companies and in those industries. It entailed the management of those companies, the strategic directions of those companies, the finances of those companies.

Q. When you were working in Florida you were writing for a particular type of audience; is that right?

A. The local readers of the newspaper.

Q. Local readers. What was the circulation?

A. I vaguely recall it was somewhere in the range of 300,000.

Q. When you write for a local newspaper you write stories that would be of interest to the local readers; is that right?

A. Generally.

Q. When you went to The Wall Street Journal what was the circulation of The Wall Street Journal?

A. I think the high was somewhere in the range of two million, something like that, I think I'm—don't hold me to that.

Q. Would the demographics be the business community?

A. It would be broader than the business community.

Q. What would be the audience?

A. It was a high demographic. High net worth whatever that is.

Q. High net worth?

A. Affluent, I should say, highly educated. It includes the business community, professionals, but also it skewed to that, but it included just everyday, average, John and Jane Doe.

Q. In terms of the local community would it include—as an example, the area of Florida that you were in approximately, what would have been the ethnic make-up there?

A. Well, it was something less than, I think, 30 percent African American, mostly predominantly Caucasian.

Q. You would expect your readership to be similar to those demographics when you were writing in Florida?

A. It was a local community.

Q. How about Wall Street Journal as far as ethnicity?

MR. BAINE: Of the readers of The Wall Street Journal?

MR. ANGINO: Right.

A. The ethnic makeup?

Q. Yes.

A. I'm clueless about that.

Q. Where did you go from The Wall Street Journal?

A. To Newsweek.

Q. So when you're working and writing in Florida, you're writing things that would be of interest to the local readership. Wall Street Journal, writing things that would be business-oriented?

A. Yes.

Q. Of interest to the business community?

A. Not just the business community, that was part of it.

Q. You use the word "affluent", of interest to people of wealth?

A. I mean without—

MR. BAINE: I'm going to object to the characterization of the testimony. His testimony is quite clear. Don't ask him another question. You may—he indicated that the readership is broader than the business community itself. I clearly read The Wall Street Journal

and I'm not a businessman.

MR. ANGINO: I think you are.

MR. BAINE: I don't think what you mean by the business community—

Q. Business community entails a variety of—law is a business, medicine is a business.

A. I don't know what you're asking.

Q. I'm not asking anything. When we are talking about readership and when we are talking about journalists, the goal is to sell papers or magazines; is it not?

A. Well, it is a business.

Q. So the goal is to sell papers and magazines?

MR. BAINE: The reporter's goal?

MR. ANGINO: Yes.

A. No, that's not my goal. My goal is to write stories that I think are of interest to the readers. There's other people concerned with selling that.

Q. But if the readers aren't interested in what's being written will they buy it?

A. I suspect not.

Q. If the readers don't buy, you don't have a job; is that right?

A. Well, yes, in the publications that I worked at, there are different publications, some really, well, no need to get into that.

Q. Some might stress how important the stories be interesting to the type of readership that you have; is that right?

A. Well—

MR. BAINE: Objection to the form, "some might".

MR. ANGINO: He was about to answer that.

MR. BAINE: You can answer.

A. I'm about to say some of the stories that I've written in my career have been wholly uninteresting, but were deemed to be important to the readers.

Q. Have you ever been criticized because of the fact that what you were writing might offend somebody?

A. Have I ever been criticized for that?

Q. Yes.

A. Not that I recall.

Q. Let's move on to Newsweek, 1994; is that appropriate?

A. That's when I joined.

Q. What was the reason of leaving The Wall Street Journal to go to Newsweek?

A. I was offered a job at Newsweek.

Q. Was it one that paid more money?

A. Did it pay more money?

Q. Yes.

A. Yes, it paid more money.

Q. Did you leave for the money or for some other reason?

A. I didn't leave for the money, it wasn't that much more.

Q. What was the reason?

A. One, I had been at The Wall Street Journal for somewhere between 13 and 14 years. It had been a great challenge, I had a had a wonderful career there and I wanted to try something else.

Q. Did you apply or did somebody recruit you?

A They recruited.

Q. Have you worked in different capacities for Newsweek or in the same capacity?

A. What do you mean?

Q. You've been a reporter, I assume you don't have beats as a reporter or do you for Newsweek?

A. I have a beat.

Q. You have a beat, okay. What is your beat?

A. Basically media and entertainment.

Q. In a different way than media and entertainment for The Wall Street Journal?

A. Not really.

Q. Same? If I were to look at your columns over the last four years would most of them deal with celebrities?

A. No. I write about the business side of show business.

Q. The business side of show business?

A. Meaning entertainment and media.

Q. Do you have a column with each Newsweek story, each Newsweek publication?

MR. BAINE: I'm going to object to the form of the question. Specifically the use of the word "column" might mean different things to different people.

Q. Do you have a story or a by-line or some part of each Newsweek publication?

A. No.

Q. So you don't write something that appears every week in Newsweek; is that right?

A. That's correct.

Q. Approximately how many stories would you have in a year?

A. It varies. It really varies.

Q. Give me the range please.

A. It is very hard to do that. I try to be in the magazine as often as I can.

Q. I mean you must know whether it's ten times a year or 30 times a year.

A. Well, I would say it's certainly more than ten times a year,

but beyond that it's very difficult to say for a variety of reasons.

Q. Is there a particular place where all of your stories for the past four years are housed?

A. Generally, yes.

Q. So I'm going to ask you and your attorney if you will give me a copy of all of your stories; okay?

MR. BAINE: We'll look into that.

MR. ANGINO: If that's any problem, I'll make a motion to produce.

MR. BAINE: Okay.

Let me make sure that the record is clear on one thing. You asked the question whether there is a particular place where the stories are placed, you're asking not where they normally appear, I think you may have particularly meant where they are all kept?

MR. ANGINO: Yes.

MR. BAINE: That's—

A. I thought you meant do they appear in a different section of

the magazine.

Q. Then there is confusion.

What I'll suggest to you is that you have written stories and you've written them over a four-year period of time. When I use the word "housed", I'm talking about if you wanted to find out what stories you have written over the last four years you would be able to get them either by way of a computer or by way of something; is that not correct?

A. Stories that I've written are available.

Q. Through some means; is that right?

A. Yes.

Q. That's what I'm talking about.

MR. BAINE: Okay.

Q. We'll facilitate the deposition if I see the stories, then I don't have to ask you about all the different topics and the people and the individuals that may have been discussed and the circumstances.

MR. ANGINO: So if we can do that we can foreshorten this to

some degree. Let's ask therefore some questions about a particular document that was supplied to me called "researcher's manual" and do we have a copy that we can mark as a record?

MR. BAINE: You can mark that as an exhibit.

MR. ANGINO: We'll call this Roberts 1.

(Roberts Exhibit 1, researcher's manual, marked for identification.)

Q. Mr. Roberts, I'm showing you what had been marked yesterday as Time Warner Number 2. Do you see that?

A. Yes.

Q. It says "code of ethics", do you see a society that is mentioned there?

A. Yes.

Q. What society is that?

A. Society of Professional Journalists.

Q. Are you a member of that society?

A. No.

Q. Do you know whether or not Newsweek is?

A. No.

Q. Have you ever seen a code of ethics for The Society of Journalists?

A. Have I had this in my possession before?

Q. Have you ever seen that before?

A. Maybe.

Q. Where did you see it?

MR. BAINE: He said maybe.

Q. If you might have seen it, where did you see it?

MR. BAINE: Objection to form. That's a hard one.

Q. Did you know that there was such a thing as a code of ethics?

A. No.

Q. I show you what was marked Time Warner 3, this was a 1987 version of that. Have you ever seen that?

A. No.

Q. Time Warner produced, and we are not going to go into it, something they called "editorial guidelines". Is there such a thing at

Newsweek?

MR. BAINE: Objection to the form of the question. If you're going to make part of your question a reference to a document and ask him whether there is such a thing he has to be able to see the document to answer the question. I guess you should refer to it without talking about the document or—

MR. KASTENBERG: If you're going to go into the area we want to, as a courtesy, let Milt know.

MR. ANGINO: That's why I won't do a thing, so I will get away from that.

Q. Is there any type of document that you have ever seen at Newsweek that deals with what writers or journalists should or shouldn't write about other than what has been marked Roberts Number 1?

MR. BAINE: Objection to the form of the question, but you may go ahead and answer.

A. I vaguely recall there may have been a memo distributed that touched on what writers do.

Q. Have you seen what we've marked as Roberts Number 1?

A. I vaguely recall having seen this, vaguely.

Q. Have you gone over this with your attorney?

MR. BAINE: Objection to whether or not he's had a communication with me.

Q. Not a communication. Have you gone over it?

MR. BAINE: You can ask whether he went over it in preparation for the deposition. You can ask him that.

Q. Have you gone over this in preparation for the deposition?

A. I've seen it.

Q. In preparation for the deposition?

A Yes.

Q. Have you seen, during the four years that you've been with

Newsweek, a memorandum which is not contained within this?

A. I'm not sure of your question now.

Q. For instance, what I was supplied with today was this researcher's manual and there is something in the back that carries a date. Is that something different?

MR. BAINE: Let me explain something here, you have three different documents under one paper clip. If you want to ask if he has seen them—

MR. ANGINO: Let's make them a separate document.

MR. BAINE: You can make it 2 and 3.

(Roberts Exhibit 2, document, marked for identification.)

(Roberts Exhibit 3, document, marked for identification.)

Q. We've shown you Roberts 1, 2 and 3. Had you ever seen anything else that dealt with ethics or what journalists should or

shouldn't write about other than these three documents at Newsweek?

A Not that I recall.

Q. With regard to Roberts Number 1, researcher's manual, there is a heading called, "The science and art of checking stories"; is that correct?

MR. BAINE: It's on Page 9.

Q. Page 9.

MR. BAINE: That's a partial reading of the heading, it's okay for now.

Q. And it states, "Why we fact check to insure that stories in Newsweek are true accurate and fair"; is that right?

A. Correct.

Q. And am I correct that "true", "accurate" and "fair" are emphasized, those words, those three words?

MR. BAINE: You mean emphasized like in bold?

MR. ANGINO: They're in bold in mine.

MR. BAINE: I can't tell. Do they appear bold to you or not?

You have the original.

THE WITNESS: In the original they do appear bold.

A. Yes.

Q. Would you agree that a journalist should attempt to ensure that the stories in Newsweek are true, accurate and fair?

A. I agree.

Q. Then "true" in the next paragraph is again in bold; is that right?

A. Right.

Q. "True in that events happened as we described them, that people are as we described them, and said what we directly or indirectly attribute to them"; is that correct, is that what it says?

A. That's what it says.

Q. They actually then go on and say, "Accurate in that all the facts that can be checked have been verified and the best available sources and are correct, fair in that our story is balanced and we have

not admitted material or used material in a way that makes the story misleading."

MR. BAINE: I want to make sure the Reporter has "omitted material", not "admitted material".

MR. ANGINO: She'll correct any reference to these to make sure that she has it correct.

Q. It then goes on to, "Finding, using and evaluating sources of information."

MR. BAINE: "Sources and information"; is that right?

A. Yes.

Q. If you go on to Page 10, the bottom, it says, "Do not let any, quote, first, quote, or superlative go unchallenged", and then discusses books and specific areas, music, science, American history, et cetera.

When we go to the next page, Page 11, it says, "Writers say so. Sometimes information stated by the writer, such as the plot of a book, and an event he/she has witnessed is drawn from the writer's

own experience and may have to be taken on the writer's say so, but beware writers can confuse characters, incidents or misspell names."

MR. BAINE: "Characters or incidents."

MR. ANGINO: Thank you.

Q. "How much you can accept on the writer's authority and expertise is something you will learn with experience. Check whatever is checkable. It's always better to do too much checking than not enough", is that what it says?

A. Yes.

MR. BAINE: That's what—that is a partial reading. It goes on.

MR. ANGINO: Right.

Q. "For those points taken on the writer's authority put the writer's initials in the margin of your checking copy to indicate he/she takes responsibility for the accuracy. In cases where a writer is expressing his own opinion, and this will come up frequently in reviews, underline the text on the checking copy with a wavy line

rather than a straight line and put the writer's initials in the margin", is that what it says?

MR. BAINE: Initials, plural, that's what it says.

Q. "Subjective assertions. In addition to verifying facts, a researcher must ask him/herself while checking a story if the evidence available in correspondence files, news clippings and other sources supports the generalizations, allegations, inferences and conclusions the writer has drawn. If the researcher thinks that the evidence does not support what the writer is saying he/she must raise the point with the writer. If the researcher and writer can't come to an agreement, the researcher should bring the problem to the attention of the senior editor."

Appropriately read?

A. Yes.

Q. "Omitted information, likewise if the researcher feels that information has been omitted that makes Newsweek's story misleading he/she must raise the point with the writer. Again if the re-

searcher and writer can't come to an agreement the researcher should bring the problem to the attention of the senior editor."

Appropriately read?

A. Yes.

Q. "Anticipating legal concerns. If you are assigned to a story with potential legal concerns, alert the head researcher of your department and the law department as early in the week as possible. If in doubt about possible legal concerns in a story ask", and there is an exclamation point; is that right?

A. Yes.

Q. "It's always better to raise questions before—", and is "before" emphasized?

A Looks like it.

Q. "—than to be sorry afterwards."

Is that right?

A. Yes.

Q. "Reported stories.

Accountability for information provided by a correspondent

rests with the correspondent. It's the correspondent's job to report accurate information including correct titles and spellings of names of people he/she has interviewed."

Goes on to say, "Often a correspondent will interview average citizens", and then discusses things there. "The file is our own source, however, researchers will fact check all information that can be checked independently. In the case where a story or information has been published and the researcher notices a discrepancy with the correspondence file he/she should bring the discrepancy to the—"

MR. BAINE: Well, you skipped a couple of lines.

MR. ANGINO: Yes.

MR. BAINE: Okay.

Q. "Information within quotes. Factual information within a direct quote must be checked just like any other factual information. Expert opinion, personal experience and insider knowledge within a quote need not be checked"; is that correct?

A. Yes.

Q. When they refer to researchers and head researchers and others can you tell me what we are talking about? Would you be considered a researcher?

A. No.

Q. Let's discuss what happens chronologically at Newsweek with respect to you and the preparation and the publication of a story. Could you tell me the typical processes of what you do from the time you get an idea for a story up until the time it's published?

A. Well, I would discuss it with my immediate editor, the idea.

Q. Who would that be?

A. Mark Vamos. If the idea is approved I would report it, that is, gather the information, maybe I would talk to him along the way just to consult. I would write the story, I would turn it in to him, he would edit it, decisions would have been made prior to that about the space, the size of the story. I would write it, turn it in to him, he'd

edit it, it would be passed along to a couple more editors, any questions they had about the story I would address. It would go into the magazine.

Q. Let's proceed with what we will call the Tupac Shakur story that carries a publication date of September 1, 1997 which I understand was on the newsstands August 25, 1997.

What is your recollection as to the first thing that happened?

A. Well, I was informed by a colleague—

Q. Who is the colleague?

A. Richard Turner.

Q. Where does he live? Is he a Newsweek colleague?

A. Yes.

Q. And is he a journalist?

A. Yes, but I was informed that a source of his would be in touch with me about a possible story regarding Tupac.

Q. A source of his?

A. Yes.

Q. A source of his would be in touch with you?

A. Yes. The public relations person.

Q. I'm sorry, is Turner—I may have asked this question, but if I did excuse my senility. Is he a journalist?

A. He is a colleague of mine at Newsweek. He is a writer.

Q. He is a journalist?

A. He's a journalist.

Q. What was the public relations that you were mentioning there?

A. It was a public relations representative.

Q. Somebody else?

A. Someone else outside of Newsweek.

Q. Outside of Newsweek there was a public relations individual whose name is?

A. I recall that his name was Sean Cassidy.

Q. Can you spell Sean?

A. I think it's S-e-a-n, but I can't be certain of that.

Q. Cassidy. And where is he and what does he do?

A. He is in New York, he's with a public relations agency the name of which escapes me now.

Q. Is this someone Turner knows?

A. I'm not quite sure of the relationship. They had some past contact.

Q. So he said, "Sean Cassidy is going to be in touch with you", is that what I understand?

A. I vaguely recall that's how it was.

Q. Continue.

A. About a possible Tupac story.

Q. Did you know who Tupac was?

A. Yes.

Q. Can you tell me how you knew who he was?

A. Yes, he's an entertainer.

Q. Just from?

A Just general knowledge. I was familiar with his music.

Q. You knew he was an entertainer, all right. Go ahead.

A. At some point I was or contact was made between me and Sean Cassidy.

Q. In person, over the phone?

A On the phone, by phone.

Q. Any tape made of that conversation?

A. Tape? What do you mean?

Q. Was there a tape of the conversation?

A. Did I record it?

Q. Yes.

A. No.

Q. Any notes of that conversation?

A. I don't remember there being any notes.

Q. As part of your years of experience working for the various publications were you taught the importance of making notes of conversations?

A. Yes.

Q. Is there some reason you did not make any notes of your conversations with regard to Cassidy?

A. Yes.

Q Why?

A. I wasn't reporting the story. It was just an idea. He was communicating a possible idea.

Q. So just something that is being discussed that may or may not become a story; is that what you are saying?

A. Correct.

Q. Approximately when did you talk to him?

A. That's a hard one. It was within days, within weeks of my starting, within a couple of weeks of my starting to work on a story. I just don't know—I don't know.

Q. Is your best estimate a couple of weeks?

A. I don't know.

Q. Somewhere from days to a couple of weeks?

A. Yes, fair enough.

Q. Go ahead.

MR. BAINE: What's the question?

Q. What next happened? What did he tell you?

A. He told me that there were, in the approximate year since Tupac's death, that there had been a number of lawsuits, a number of legal actions involving the estate and that his client was involved in a bit of that legal action.

Q. Who was his client?

A. Richard Fischbein or I should say either Mr. Fischbein or the law firm Mr. Fischbein is associated with.

Q. So what happened was that we have a public relations individual contacting media, being Newsweek, saying, "We have a potential story and the origination of it is that there is a lawyer by the name of Richard Fischbein who is involved with a number of lawsuits"; is that correct?

MR. BAINE: Objection to the form of the question.

MR. DAVID: Objection to the form.

MR. BAINE: You asked him what was said and he gave you his

best recollection and now you're kind of using your own words and asking him to adopt your words and I think it's best he use his words to describe the conversation.

MR. ANGINO: I'm just trying to make it clear.

MR. BAINE: You have the identities.

A. What was the question?

Q. Basically you understood that this public relations individual had a client by the name of Fischbein; is that correct?

A. That was my understanding, yes.

Q. Did you ask how a lawyer would be a client of a public relations firm? Did you ask that question?

A. No.

Q. But this is what was told to you?

A. This is my recollection.

MR. BAINE: Objection to the form of the question. You said, "This was told to you."

Q. That Fischbein was a client of this public relations person?

MR. DAVID: Object to the form.

Q. That's what was told to you; right?

A. From the conversation I came away with the impression that Mr. Cassidy represented Mr. Fischbein or Mr. Fischbein's firm.

Q. And Mr. Cassidy said there might be a good story?

MR. BAINE: Objection to the form.

MR. DAVID: Objection to the form.

A. I didn't say that. I said that there had been a number of legal actions that might make for a story.

Q. What else did he say?

A. That there was some paperwork that was relevant to these legal actions that if I were interested in following up his client would be available.

Q. Okay.

A. That if I wanted some of his paperwork it could be provided.

Q. Okay.

A That's pretty much it.

Q. That was that conversation?

A. As I recall.

Q. What did you say?

A. I said I'd think about it or, "Send over the papers", or yes, may be a story, may not be a story, I don't know precisely, but it was along those lines.

Q. On June 5, 1998 there was a letter from—

MR. BAINE: You mean 1997?

MR. ANGINO: 1998.

MR. BAINE: This is our letter to you?

MR. ANGINO: Yes.

Q. On June 5, 1998 there was a letter from Kumiki Gibson to various attorneys, "Dear Counsel, enclosed please find a copy of the documents that are referred to in Defendants Newsweek's and Johnnie L. Roberts' self-executing disclosures", and then it goes on.

MR. ANGINO: Do you have your copy that he can look at?

MR. BAINE: Yes.

MR. ANGINO: The whole file?

MR. BAINE: Sure.

MR. DAVID: Can we have a copy? If you are going to mark an exhibit I'd like to have a copy of it.

MR. ANGINO: Well, it wasn't to Richard Angino.

MR. DAVID: I'm not supposed to guess what you're marking into the record and make sure that I guess you're supposed to make copies for the rest of us.

MR. KASTENBERG: I would specifically note that there was a—I expressly request that you make sufficient copies of any exhibits we're going—

MR. ANGINO: You can say what you want. Your objection is preserved, all right? I don't have copies for you, all right?

Q. Do you have it in front of you?

A. I have this in front of me, yes.

Q. What we have here is what? Can you kind of go through it and tell me what it is?

MR. BAINE: You want him to go through the whole pile? We made a representation of what it was, our representation is accurate. If you want him to confirm that that's accurate, you know, he can do that.

Q. Do you know, have you had a chance to go through this in preparation for this deposition?

MR. BAINE: I don't think the witness has in preparation for the deposition turned every page of that, so he can tell you what was with my letter. I am telling you what was in my letter, as with Ms. Gibson's letter, is accurate, Richard.

Q. It says it's Mr. Roberts' notes and resource materials 006-0187.

MR. BAINE: Okay, let's have him look at that. You want to ask

whether those are his notes and resource materials?

Q. That is my question.

MR. BAINE: Go ahead, you can answer that question.

A. Yes.

MR. KASTENBERG: What page?

MR. ANGINO: 0006-0187.

Q. Can you tell me how you acquired that material?

A. All of it or some of it?

Q. All of it.

MR. BAINE: You'll have to go item by item.

A. Well, six is a product of my reporting.

Q. Now you say "reporting"?

A. Reporting.

Q. Now, let's take—

A. 6 through 17.

Q. All right. 6 through 17 and we'll break it down into categories. By "reporting", what do you mean?

A. I would call up people associated with the story and interview them and take notes.

Q. Do you have your notes?

A. Yes.

Q. These are the notes?

A. Correct.

Q. Were they done by means of a computer?

A. I typed them on a computer.

Q. So these are your notes as they've been printed from the computer?

A. Correct.

Q. Then what is 00018?

A. This is a letter written to another colleague of mine, John Leland, by, it looks like the attorney or an attorney representing William Garland, who in this letter is identified as a father of Tupac Shakur.

Q. And this is carrying the date of February 13, 1997?

A. Correct.

Q. How did you happen to acquire that?

A. I'm not quite sure, but in all likelihood my colleague passed this along to me at some point. At some point after he received it.

Q. Let's go back to the chronology here. You said that the first conversation with the public relations individual was somewhere between days and a couple of weeks prior to the story so that we are talking about August of 1997; is that right?

A. That's correct.

Q. Now you had this discussion with this public relations individual and you then said you were going to think about it. What next happened?

A. At some point after the conversation we decided that we'd do a story.

Q. We being?

A. Well, I had the idea and I took it to my editor and it was, basically it was approved.

Q. So you've received this information by way of this telephone

call. Did you have anything further at that point in time when you talked about doing the story with your editor?

A. I'm sorry?

Q. Did you have anything else other than that conversation?

A. I don't—

Q. Well, the individual offered to supply you with certain documents or certain papers; do you remember?

A. Right.

Q. Did you have those papers and documents?

A. When I talked to the editor?

Q. Yes.

A I don't know if I had them in hand then. I may have simply gone to him either directly after that or days after the conversation and said, "There may be a possible story."

Q. That's all I need. So you may or may not have had certain papers when you decided to do a story?

A. No. When I started working on the story I had those papers

to make a decision about perhaps pursuing an idea, no.

Q. That's what I'm saying, that first talk with the editor about potentially doing a story, you may or may not have had the papers?

A. That's correct.

Q. But at least you had from that discussion decided at least to look into the possibility of doing a story?

A. Yes.

Q. What next happened?

A. At some point I decided that I would do a story and it was mostly pegged to the anniversary, one-year anniversary, of the death, of Tupac's death.

Q. Number 1, the person who was involved was somebody who was well-known, Tupac Shakur; right?

A. Correct.

Q. He had been killed; is that right?

A. Correct.

Q. You were approaching the one-year anniversary of his death;

is that right?

A. It was approaching, correct.

Q. Would these three be factors that led you to make the decision to do the story?

MR. BAINE: Were you asking whether those are the exclusive factors or whether those were factors?

MR. ANGINO: Three of the factors.

A. Again, that I knew of these actions, that the year was approaching and—I'm sorry, what was the third?

Q. Tupac, he had been killed, a year was approaching?

A. Yes.

Q. What happened next?

A. Well, I would have started to report the story.

Q. What was the first thing that you recall doing to gather your facts to report the story?

A. Among the first things certainly was getting the papers.

Q. Whom did you contact to get the papers?

A. Cassidy.

Q. I don't want to put words in your mouth, but did you in effect say to Cassidy, "Have Fischbein's office get me the papers"?

MR. DAVID: Object to the form.

MR. BAINE: Object to the form.

A. He said he had access to these papers and I asked him to provide the papers.

Q. Okay, how did those papers get to you?

A. I don't remember how they were delivered. They were delivered.

Q. You're looking at something that looks like—

A. Yes.

Q. —a handwritten note?

A. Yes.

Q. What number does it have on it?

A. 0019.

Q. It happens to be missing from mine.

MR. DAVID: We don't have it either.

MR. BAINE: We can make a copy of it. It is a cover sheet.

MR. ANGINO: Let's make a quick copy.

Q. We are looking now at Newsweek's 00019 and at the top of the page is DKA and then it says, "Dan Klores Associates, Inc. public relations management. Johnnie, here's the information on Tupac Shakur and the litigation facing his estate. Please call Rich Fischbein at 826-2000 on Monday at 10:00 a.m."

Does that look like thanks to you?

A. Something, I don't know.

Q. And then something that perhaps is named Sean Cassidy is however at the Page 3, 86 Park Avenue South, 10th floor, New York, New York.

Can you tell us if the receipt of the documents that followed that particular number up to what has been purported to be your working file, are documents that were then supplied to you from 20

through 187; is that the number?

MR. BAINE: That's right.

A. Yes, I think these are all of the documents and I think they all came at the same time.

Q. So the public relations guy calls you and now has supplied you with documents and he gave you Rich Fischbein's number to call; is that right?

A. That's correct.

Q. He even told you when to call; right, Monday at 10:00 a.m.?

A. Yes.

Q. So that do you have a recollection of when you received this note?

A. No. I mean it would have been somewhere in that time frame.

Q. Have you had an opportunity to check your calendar in preparation for this deposition?

A. No.

Q. Do you know what Monday we are talking about at 10:00 a.m., the date of that Monday?

A. No. I mean it would have been in that time frame, but the exact day, no.

Q. Do Newsweek publications go out on a particular day?

A. Yes.

Q. What day?

A. Well, they go out at different times and I'm not the person in that area, but I think, I mean, I've seen the magazine in the airport on the newsstand Sunday nights and some airports have been in, but, and I think it arrives to subscribers on Tuesday. I think it does.

Q. Well, it's been said the 25th?

A. It's on the newsstands certainly generally the 25th.

Q. But then it then comes off supposedly on the date that is the date that would have been September 1. So let's assume that your article was done, published and on the newsstands by August 25, is it your recollection that this was, this Monday was the Monday before that or two Mondays before that that you were to call Fischbein?

MR. BAINE: Objection to the form.

Go ahead.

A. It could have been the Monday before, the 22nd you mean?

Q. Right.

MR. BAINE: No.

Q. I think if the 25th—

A. The 18th rather, it could have been.

Q. It could have been the 18th. In fact that first conversation with Fischbein do you have the notes from that first conversation?

A. Well, these are all, this is it in terms of notes that I have of my conversations with Mr.—

Q. Where do they start?

A. 00—

MR. BAINE: Fischbein in particular?

A. Fischbein, they start on 0007.

Q. What we see as Number 30, is that what it is?

A. It's the last block of type at the bottom of the page, yes.

Q. I got called probably three days after Tupac was killed.

A. Yes.

Q. The manner in which this has been transcribed, Page 1 of 12, did this come out of your computer in a chronological fashion?

A. You mean the numbering?

Q. Yes.

MR. BAINE: No. That's a confusing question. You're asking whether the interviews are recorded in a chronological order, that's a different question.

A. No. The sequence of the printout is obviously in chronological fashion, but the question is whether the interviews are in chronological order, not necessarily so.

Q. For instance, Monday would have been the 18th presumably. I don't have—

MR. ANGINO: Does somebody have a calendar? If Saturday is the 25th—

Was Monday the 25th?

MR. BAINE: I believe so.

MR. ANGINO: So the other Monday would be the 18th.

MR. BAINE: The previous Monday would have been the 18th.

Q. Now you know you talked to me on the 20th; is that right?

A. I don't know the date I talked to you, but yes, I talked to you, I know I did talk to him, this would suggest definitely I talked to you on the 20th.

Q. Now you're being shown certain phone numbers. Does that also suggest when you first talked to Fischbein?

MR. BAINE: This, of course, would record Mr. Roberts' calls, not calls in to Mr. Roberts.

MR. KASTENBERG: What Bates numbers?

MR. BAINE: Looking the 0191.

A. Says the 18th.

Q. So you first talked to Fischbein on the 18th; is that right?

MR. DAVID: Objection. The witness didn't say that for sure.

A. No, I didn't say that. I'm not sure that I actually talked to him. It shows that the call was all of a minute and eight seconds. 1.8 minutes rather. You know, I may have called the office and didn't get him.

Q. Let's kind of, so we can get our sequence, you have in front of you what is part of Roberts Exhibit Number 4; is that correct?

MR. BAINE: I don't think it has been marked as an exhibit.

MR. ANGINO: Well, we'll mark it as Exhibit 4 and we will supply obviously at the appropriate time a copy other than your copy. That has handwritten notes on it. Just for reference purposes though we'll give it that number, Exhibit 4 Roberts.

(Roberts Exhibit 4, record of telephone call, marked for identification.)

Q. And in order to have a sense of time, is the first telephone call that you have recorded there to anybody dealing with this story

available to you there?

A. There are different times here and there are numbers, toll phone numbers, that looks like.

Q. Perhaps it may make us—I'm looking at 1889 (212) 445-4110 is a phone call to whom?

A. That's my number.

Q. That's your number and was there a phone call made that particular date?

MR. BAINE: Objection. You haven't specified a date. These are the phone records for—phone calls that have nothing to do with this story have been redacted or whited out from this record.

Q. What I'm saying is 188, does it reference any phone call?

A. 188? I don't see any reference to any phone calls on 188.

Q. How about 189?

MR. BAINE: We'll stipulate the first phone call on this exhibit

is reflected on 191.

Q. 191 has a phone call; am I correct, 86 at 2:04 p.m.?

A. 2:04 p.m.

Q. And 685-4500, do you know who that is?

A. Yes.

Q. Who is that?

A. That's Sean Cassidy.

Q. So that having this in front of you, would that indicate when you called Sean Cassidy the first time?

MR. DAVID: Objection.

MR. BAINE: Objection to the form of the question. In the month of August this is the first phone call that is Sean Cassidy.

Q. Do you have any record of what that conversation consisted of?

A. No, no, I don't.

MR. BAINE: It's about 40 seconds long.

Q. The next is 8/13, which looks like 30 seconds; is that right?

A. Yes.

Q. There then was one on 8/15, it appears to be 12 minutes and perhaps 20 seconds maybe?

A. Yes.

Q. Do you have any records or any notes as to the conversation on 8/15?

A. Not that I recall.

Q. There was a follow-up call at 5:57 of one minute eight seconds. Do you have any recollection of that?

MR. BAINE: 1.8 minutes.

A Do I know what was said?

Q. Yes.

A. No.

Q. Another one on the same date at 6:20, .6 minutes; is that right?

A. Correct.

Q. Then there was a call, appears to be 8/18, 10:30 a.m., 826-2000. Do you know whose number that is?

A. 826-2000 would have been Mr. Fischbein's office.

Q. So there was a 1.8 minute call to Fischbein's office on 8/18;

is that right?

A. Correct.

Q. There was {then/than} on 8/20 two calls back to the public relations, Cassidy guy; right?

A. I'm sorry, repeat that.

Q. On 8/20 there were two telephone calls to Cassidy?

A. Correct.

Q. Then there were two calls to Fischbein's office; is that right?

MR. BAINE: On August 20?

MR. ANGINO: Right.

A. Correct.

Q. 5:55 p.m. and 6:05 p.m.; is that right?

A. Correct.

Q. The first one was of 7.9 minutes and the second one was 10.5 minutes; is that right?

A. Correct.

Q. Do you have any recollection of why there appears to be a two- or three-minute gap? Did you pick up another call or something?

A. I don't remember.

Q. But in total you would have talked to who, Mr. Fischbein?

MR. DAVID: Objection.

A. I don't remember. I mean it may have been him on that day.

Q. But it was a conversation or two conversations that consumed about 19 minutes; is that right?

A. That's correct.

Q. Can you tell me what part of the record of 0006 through 00017 pertained to those two conversations on the 20th?

A. What part?

MR. BAINE: You're asking which part of the notes reflect Mr. Roberts' conversations?

MR. ANGINO: On the 20th.

MR. BRINE: With Mr. Fischbein's office?

A. Well, probably the page marked 0007, the bottom there through 000122, last line of the conversation probably being, "Don-

ald David, why I am—"

Q. I'm sorry, what page is that?

A. 000122.

Q. So that was the conversation with Fischbein on the 20th; is that right?

A. Yes, that's probably it.

Q. The conversation with Shaun, is there any recording of what that conversation consisted of on the 20th?

A. No.

Q. When we look at the 20th, the next page, which is 192 has a 40-minute call and a number (213) 624-4246. Who is this?

A. That is probably, that number is—that's the law firm of Reinis & Reinis.

Q. Who are they?

A. They were the law firm representing Bill Garland, who—

Q. You had two conversations with that law firm of approximately 44 minutes?

A. Yes.

Q. Where does that appear on these records?

A. Looks like it starts on 00012.

Q. Where it says "Donald David"?

A. Beneath that.

Q. Do you know what the words "Donald David" appear there for?

MR. BAINE: He said it was the last part of his notes from his conversation with Mr. Fischbein.

Q. What is the reason the name appears?

A. Mr. Fischbein was probably telling me that with regard to certain aspects of these cases I might talk to—

Q. Donald David?

A. —Donald David.

Q. So then the conversation with the law firm went from 00012 through—

A. Through 00015 and it looks like that conversation ended several lines from the top line, beginning, "Afeni walked over"?

Q. And said, "Here's your son"; is that right?

A. That's correct.

Q. The one that starts with, "Globe ex", which conversation was that one?

A. All likelihood that was with Mr. David.

Q. Where does that show up on this telephone—

A. It could be one of these conversations, 0191.

Q. 01991?

A. It could be or it may not be, I'm not sure whether Mr. David called me or I called him for that conversation.

Q. The ones that are here are just 1.7, 1.2; am I correct?

A. Yes.

Q. Do you think any of those were the call that resulted in pages, what, 15 through—

A. 15 through 16.

Q. Are Donald?

MR. DAVID: Object to the form.

A. I think these are the notes from that.

Q. Where do they stop?

A. The penultimate line, 25 or once we've brought—

Q. I'm sorry, that's on 00016?

A. Yes, next to the last line from the bottom.

Q. To shut down 25 or the once we brought to shut down?

A. Yes.

Q. What is the next, what has been the testimony so far, "Can you confide it", what is that?

A. Those are questions that I had written prior to calling one of the parties.

Q. Were they pertaining to a particular claim? Seems to deal with a deadbeat dad; does it not?

MR. DAVID: Objection to the form.

A. It looks like it would have been in preparation for the interview of Reinis & Reinis which is Mr. Garland's representative.

Q. So what we have is Sean Cassidy, we then have Fischbein's office; is that right?

MR. BAINE: You're going through the records starting with Page 191?

MR. ANGINO: Right.

Q. I'm going through 191 which starts with the public relations Sean Cassidy from 8/6 through 8/26; is that right?

Fischbein 8/18 to 8/22; is that right?

A. Again we are just identifying what this record is here?

Q. That's right.

Now, if Fischbein or Cassidy or any of the other individuals here had called you this record would obviously not show that; is that right?

MR. DAVID: Which record are we talking about?

MR. ANGINO: The record we are looking at.

MR. DAVID: The ones having to do with the outgoing phone calls?

MR. ANGINO: Right.

A. Yes.

MR. ANGINO: In response to discovery requests we have asked Fischbein to supply a record of phone calls and the only thing

that was supplied was a calendar notation for the 24th of August; am I correct?

MR. DAVID: I don't believe you are.

Q. Do you have a recollection of meeting personally or talking over the phone with Mr. Fischbein on the 24th of August?

A. I don't recall that, no. Well, let me back up. I certainly didn't meet with him on that date personally. Whether I talked to him, I don't know.

Q. Do you have any record as you look at this record of any conversation that would have taken place on August 24? By record I'm talking about—

MR. BRINE: You're just asking—

Q. 0006 through—

MR. BRINE: You're asking whether there is a record of an outgoing call to Mr. Fischbein on August 24?

MR. ANGINO: I'm talking about 0006 through 00017, you reference certain things that occurred on the 20th. Do you have

anything in here that occurred on the 24th?

A. With Mr. Fischbein?

Q. Right. Do you have more than one conversation recorded in your notes?

A. No.

Q. And is it your best recollection that in preparing for this story there was only one conversation with Mr. Fischbein that you recorded?

A. Correct.

Q. And that record is as you have told us here; is that right?

A. Correct. As far as I know this is, all of this reflects the conversations that I had with him.

Q. So that if there were a second conversation obviously it speaks for itself you have no record of it; is that right?

MR. BAINE: Objection to the form of the question.

Q. With Mr. Fischbein you have no second conversation recorded?

A. Well, this may have been one conversation, two conversations, you know, I just don't remember, but it's all here, whatever

conversations that I had with him are here.

Q. When you prepare for a story and if you have a conversation do you type that conversation as you speak?

A. You mean as I'm interviewing?

Q. Yes.

A. Yes.

Q. Look at 0007, "He got called probably three days after Tupac was killed", and you continue to go on and are you typing as you are speaking to Mr. Fischbein?

MR. BAINE: I assume you also mean as Mr. Fischbein is speaking to you?

MR. ANGINO: Yes.

A. Yes.

Q. And basically looking at this does this appear to be one conversation starting at seven continuing over to nine?

A. No way for me to know whether it's one conversation.

Q. It talks about different things obviously; is that right?

A. Right.

Q. Where is the part of that conversation with Mr. Fischbein that has to do with Tucker?

A. That would be 00011.

Q. 00011. So none of your conversation with Mr. Fischbein talked about Tucker?

MR. BAINE: No. You just said 00011.

A. No, this did, 00011.

Q. I'm sorry, so on 00011 it starts with C. Delores Tucker; is that right?

A. Correct.

Q. And what you have reported here is, "We just got served the other day. I've read the Complaint now, hard for me to really understand what the issue is, but, you know, she claims, her claim is that her sex life was interfered with between her and her husband. I can't wait to hear the testimony that she is going to give on the subject. When was the last time your sex life was interfered with by

lyrics? I can't wait to hear the testimony. So I'm kind of looking forward to that one. That one was the least worrisome"; is that the sum and substance of what you recorded with regard to your conversation with Mr. Fischbein with respect to Mrs. Tucker?

A. Correct.

Q. Did you talk to Donald David about the case of Mrs. Tucker?

A. I don't recall talking to Mr. David about her case.

Q. Do you recall talking to anybody other than me with regard to Mrs. Tucker's case?

A. No.

Q. So basically—

MR. DAVID: I presume you mean other than Mr. Fischbein?

MR. ANGINO: We already went through Mr. Fischbein.

MR. BAINE: I was thinking about the same objection.

Q. Basically there were two people that you spoke to; correct?

A. Correct.

Q. Now of the material supplied to you, which was sent to you sometime before Monday the 18th, was Newsweek 00014; is that right.

MR. BAINE: 0014 is his notes.

MR. ANGINO: I am sorry, 00114.

Q. It appears—

MR. BAINE: Are we going to start examining on this document and the time slips and the conversations that he had with me?

MR. ANGINO: These are the three areas we are going to talk about.

MR. BAINE: It is a good time for a quick break.

(Recess)

Q. What I'd like you to do, Mr. Roberts, is to look at 191, the date being August 20 and as we said before your conversations, there were two, with Mr. Fischbein were approximately 18 and a half to 19 minutes.

MR. BAINE: Objection to the form of that question. Mr.

Fischbein and Mr. David have the same phone number, so I don't think that you can assume that those two conversations were both with Mr. Fischbein.

Q. Do you think on 8/20 that you talked to Mr. Fischbein and Mr. David or just one?

A. I think I talked to Mr. Fischbein. It's possible or I could have talked to Mr. David. I'm less certain about that.

Q. But you are certain that the conversation of 0007 through 00012 was with Fischbein?

A. That would be my notes, I'm sorry, 000—

Q. Seven.

A. Yes.

Q. Through 00012?

A. Yes.

MR. BAINE: Through the top third

of 00012.

Q. So to be perfectly accurate, the bottom fourth of seven?

A. Yes.

Q. All of eight?

A. Yes.

Q. All of nine, all of ten, all of 11 and the top third of 12; is that right?

A. That's correct.

MR. BAINE: Top six lines of 12.

Q. One, two, three, four, complete pages and parts of two other pages?

A. Yes.

Q. And if you talked to Mr. Fischbein in both conversations the most that you would have spent talking to him was about 18 to 19 minutes; is that correct?

MR. KASTENBERG: Objection. Mischaracterizes prior testimony.

MR. DAVID: Objection.

Q. By this telephone record—

MR. BAINE: I think you mean to say the two conversations reflected on 191 on August 20 total 18.4 minutes. We can agree on that.

Q. And your counsel said if you had talked to Donald David in

one of these two conversations then the other conversation could only have been 7.9 minutes or 10.5 minutes; is that correct?

MR. KASTENBERG: On that day?

MR. ANGINO: On that day.

MR. DAVID: On an outgoing basis?

A. On an outgoing basis?

Q. On an outgoing basis.

You did on that same day have two conversations with Richard Angino; did you not?

A. 238-6791? I made two calls there.

Q. One was how long, 2.6 minutes?

A. 2.6 minutes.

Q. And the second was 14.8 minutes?

A. That's correct.

Q. Now both of those would have been with Richard Angino; would they not?

A. I think so, yes.

Q. And if you add those two up you would be totaling 17.4 minutes; is that right?

A. Well, I don't know that I actually talked to you on both of

these conversations. It would appear that I did in the second one certainly, but I'm not certain what happened in the first one there.

Q. Do you have any recollection as to what you spent 2.6 minutes doing if it wasn't talking with me?

A. I'm not suggesting that I wasn't talking to you. I'm saying I don't know. I do see that I made two calls to you that day and I reached your office and I do know that I talked to you that second phone call for sure.

Q. And you don't have a recollection as to what happened with the 2.6 minutes?

A. Maybe I talked to you, maybe I didn't. I'm just not certain.

Q. But you are certain that all that you recorded was what appears on six, which is one, two, three, four, five, six, seven, eight, nine lines, ten lines? I'm sorry.

A. On which one?

Q. Page 6, it starts with, "When you file a Complaint"; do you see that?

MR. BAINE: Are you asking him to identify the notes of this

conversation with you?

MR. ANGINO: Yes.

MR. BAINE: You haven't asked that yet, maybe you should ask him that.

Q. If you look at six, are these your notes of your conversation with Richard C. Angino?

A. Yes, it would appear on 0006—

Q. And they start—

MR. BAINE: He's in the middle of an answer.

A.—through the first half of approximately 0007.

Q. It starts with, "When you file a Complaint"; is that right?

A. Correct.

Q. Following me through, "When you file a Complaint", is one line; is that right?

MR. BAINE: No, that's not a whole line.

Q. I'm saying that particular line is a line. I'm going down on

the left. "When you file a Complaint", goes through one line. The next line is on—which is two, the next line.

MR. BAINE: Are you asking him to count the lines? Why don't we do that?

MR. ANGINO: You want him to include your line with name and phone number?

MR. BAINE: No, because it's—

MR. ANGINO: It's not obviously a—

A. Ten.

Q. Count the others on the other page.

A. Ten.

Q. So ten on the one page and how many on the other ten?

MR. BAINE: Ten.

Q. 20 lines; is that correct?

A. That's correct.

Q. Those 20 lines are what you recorded with respect to 17 minutes; is that right?

MR. BAINE: Objection. You're glancing back at the phone

records and you are adding two conversations together.

Q. Two point six.

MR. BAINE: When the witness said he doesn't know if he talked to you in the 2.6 conversation—

Q. Let's take 20 lines, even if you talked for 15 minutes, which is 14.8 minutes which you recorded, was 20 lines; is that correct?

MR. BAINE: He said that several times now, he recorded 20 lines.

Q. As you sit here do you remember that conversation?

A. Yes.

Q. Do you know the first topic that was discussed in that conversation?

A. I vaguely recall it was the sort of process, here's when I got involved and here's what happens when you file a lawsuit, here's the process. I vaguely recall that.

Q. Let's not be so vague. Was not the first topic of the conver-

sation a discussion of the constitutionality?

MR. BAINE: Are you testifying?

MR. ANGINO: No, I'm asking a question.

MR. DAVID: I object to the form.

Q. Was not the first subject of the conversation the constitutionality and the protection of the First Amendment with respect to what Tupac Shakur had done? Was that not the first topic of the conversation?

A. Not that I remember.

Q. Did you not reference the Falwell case as being a basis upon which Tupac Shakur could do what he did? Did you not do that?

A. Certainly not.

Q. Did you not discuss with me the Falwell case?

A. Certainly not.

Q. Did I not point out the differences between the Falwell case and what Tupac Shakur had done?

A. Not to me.

Q. Did we not, after going through the Falwell case and the

constitutionality of what the Supreme Court did in Falwell, talk about whether that is or is not represented or similar to what happened with Tupac?

A. That wasn't a conversation I had with you.

Q. You didn't have that conversation with me?

A. Not at all.

Q. All right. You're saying that the first part of the discussion did not involve constitutionality and whether or not Tupac was protected in what he did?

A. I'm saying I did not have a conversation with you about the constitutionality of what Tupac did or what Falwell did or any of that.

Q. So basically you are under oath here and it's not that you don't remember that conversation, you're saying it never took place?

A. I don't recall that having taken place.

Q. You don't recall or did it take place?

MR. BAINE: It's the witness—you've asked a series of questions.

Q. Did a conversation discussing the constitutionality of what Tupac Shakur said in his records constitute actually a number of minutes and the first number of minutes of your conversation with me?

A. I do not recall having any conversation with you about the constitutionality in this case involving Tupac.

Q. Do you recall that there was some weeks later a radio station in Chicago where you were?

A. I recall appearing on a radio program, yes.

Q. And wasn't the discussion on that radio program the constitutionality of what Tupac Shakur's records and the words were whether they were protected or not protected by the Constitution? Was that not the subject of that radio broadcast?

MR. BAINE: The entire subject?

Q. The subject that you were involved in?

A. I did not discuss the constitutionality of anything relating to Tupac in that radio.

Q. Were you in Chicago with respect to that radio broadcast?

A. I was in, I was here in New York.

Q. So they were recorded you by way of a telephone call?

A. I participated by way of telephone.

Q. You participated by way of a telephone call. Do you remember who else was on the line with regard to the constitutionality of this recording?

A. I don't remember the constitutionality subject, but the other participants—

Q. Who were the other participants?

A. You were one of them.

Q. And who was the other one?

A. There was a professor of some sort, I don't remember his name or what university or college he was associated with.

Q. And was not the subject the constitutionality of the lyrics?

MR. BAINE: Was that the subject of—

Q. Of what the person who was consulted and me, was there not an exchange of views with regard to the constitutionality?

A. I don't remember. You may have, the professor may have, the moderator may have, I don't remember. I didn't.

Q. When it came to you after there was this discussion back and forth dealing with constitutionality, what were your words?

A. I vaguely recall that I said something like, "I'm not a constitutional expert", at some point.

MR. BAINE: Let him finish.

A. I vaguely recall that, "I'm not a legal expert or a lawyer", and that I could not comment on the merits of, I think specifically, Ms. Tucker's case.

Q. Dealing with the lyrics from Tupac Shakur?

A. It deals with, her case deals with much more than the lyrics

of his case.

Q. But wasn't the discussion as to whether or not the lyrics from Tupac Shakur's disk were protected by the Constitution?

MR. DAVID: Object to the form.

A. Again, I don't remember that being the subject of this radio review, report. I did not discuss that.

Q. Have you or your attorney attempted to get a copy of the transcript of that radio review?

MR. BAINE: Don't ask him whether your attorneys tried to do that.

MR. ANGINO: Have you tried to?

MR. BAINE: Ask him. Tell him whether or not you've reviewed a transcript of it.

Q. Have you reviewed any radio transcript of what was said?

A. No.

Q. Are you aware whether there was a transcript of what was said?

A I suspect there was, there generally is.

Q. Do you know whether or not a request has been made for that transcript?

MR. BAINE: Don't ask whether or not you know your lawyers have done anything like that. We can deal with that on another level. Have you made—

A. Did I do it? No.

Q. Are you aware of any requests?

A. I'm not—all I can say is I didn't make a request for that.

Q. But you are testifying that that was not the initial subject of the discussion between you and me on August 20, 1997; is that right?

A. I'm specifically saying I don't remember you and I discussing this in that conversation or for that matter any conversation.

Q. Do you recall what was the second area that may have been discussed?

MR. BAINE: Object to the form of the question. There's something that may have been discussed is awfully vague.

Q. You don't remember a discussion of the Constitution and Falwell and whether or not the Supreme Court's decision in that case has anything to do with that, you don't remember any of that?

A. No.

Q. Tell me what your clearest recollection is of the first subject that you and I talked about?

A. Well again, I think it was your involvement in this case.

Q. What did you say, let me back up, start as best you can with your recollection and you may look at these notes to refresh your recollection. The call at 3:45. What happened?

MR. BAINE: Objection. He has told you that he doesn't know that he spoke to you during the call at 3:42. He said that several times.

Q. Let me perhaps help you to refresh your recollection.

MR. BAINE: You can do that.

Q. Did we not talk for a period of time and did you not after that conversation say, "I will call you back"?

A. Mr. Angino, it may have occurred that way. It may have been that you and I did make contact and for whatever reason it was not an extended conversation. It may have been that I was put on hold for a minute waiting. That first conversation I just don't remember.

MR. BAINE: Let me insert an objection here, Mr. Angino, because this is the kind of difficulty we get in when the witness is asking the questions. You have provided to us memorandum of your conversation and we've just, I think, given an incomplete description that in context here is misleading. And so I'm going to suggest to you that what you just suggested might have happened, could not have happened the way you are suggesting it could have happened because what you have suggested to me in the past is that the conver-

sation, had Mr. Roberts said, "Let me call you back on my nickel", implying that it's your phone call to him in this case it would not show up on these records.

MR. ANGINO: That is what I was going to say.

Q. Was there not even a conversation that preceded the two that you have recorded here?

A. Made by me?

Q. Yes. Where you said about calling me back on your nickel. Do you use the term such as that, "Let me call you back"?

A. Yes, yes.

Q. "On my nickel", is that an expression?

A. I use that. I use that term.

Q. So that there are two conversations here that were on your nickel; is that right?

A. Correct.

Q. Do I know you or did I know you on August 20 or any time after that that I would know that you use terminology like calling

somebody on your nickel?

A. I don't think you would have known that.

Q. Do you think I would have had to talk to you on my nickel to know that that's what you said to me?

MR. BAINE: Object to the form of the question. Now you're just kind of making an argument and that's not a meaningful question.

Q. All right. It is a term you use; right?

A. Correct.

Q. It appears on your nickel there were two calls to my office; is that right?

A. Correct.

Q. If you called two times on your nickel then those were calls that have been recorded at 2.6 and 14.8 minutes?

A. I called your office twice.

Q. With regard to either or both or in combination of those

calls, tell me what you remember was the first thing that was said.

A. Well, I would have introduced myself, I would have told you I'm working on this story and I would have told you—

Q. You know what you're doing, "I would have", I'm asking you to remember.

A. Well, I'm sure I did that.

Q. Are you sure you introduced yourself; okay, go ahead?

A. And I'm sure I informed you why I was calling.

Q. What did you say?

A. Probably said—well, I can't tell you verbatim, but in general I informed you that I was working on a story and that it involved your client in connection with her legal matters concerning Tupac.

Q. Was it legal matters or did you specifically say the fact that she couldn't have sex?

A. It was probably—

MR. BAINE: When he first started the conversation with you?

Q. After you had introduced yourself did you talk first of all

about the subject that you were going to talk to me about which was the lawsuit?

MR. DAVID: Object to the form.

Can I have a running object to the form of all of these?

A. Your question is please?

Q. Did you say that you were writing a story about lawsuits dealing with Tupac Shakur's estate?

A. Yes.

Q. Or did you just say you wanted to talk to me about the lawsuit involving C. Delores Tucker and the Tupac Shakur estate?

A. To the best of my recollection I said that, "I'm writing a story about lawsuits, one of which was your client's."

Q. So you are not, you don't recall describing it as the lawsuit singular?

MR. BAINE: Objection. He just said that he said both, that he just testified that he told you he was calling.

MR. ANGINO: You're getting into a narrative.

MR. BAINE: You're mischaracterizing what he just said.

MR. ANGINO: Okay, that's enough to say.

MR. BAINE: You can read it back if you want.

A. What is your question?

Q. You said you were writing about lawsuits?

A. To the best of my recollection I said I was writing about lawsuits, one of which was involving your client.

Q. What was your next question or next comment?

A. It must have been a question just reviewing the notes here that—

Q. Can you do it without reviewing the notes?

MR. DAVID: Objection. You said before, "Make reference to the notes."

Q. You may use it to refresh your recollection.

A. That's what I'm doing.